Stanford University Library
OCT
21
1903

NORTH CAROLINA

A ROYAL PROVINCE

STANFORD UNIVERSITY LIBRARIES
WITHDRAWN

NORTH CAROLINA: A ROYAL PROVINCE

Digitized by the Internet Archive
in 2025

https://archive.org/details/northcarolinaroy0000char

NORTH CAROLINA: A ROYAL PROVINCE

1729—1775

THE EXECUTIVE AND LEGISLATURE

CHARLES LEE RAPER

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, in the Faculty of Political Science, Columbia University.

1901

ISSUED FROM THE UNIVERSITY PRESS

CHAPEL HILL, N. C.

PREFACE.

So far as the author knows, this is the first work on the royal government of North Carolina as an institution. The whole work contains ten chapters, of which the following four are among the more important. It is the result of an investigation into the original material, printed or in manuscript.

CONTENTS

INTRODUCTION

The character of the government under the proprietors 1
The transition from proprietary to crown government 2

CHAPTER I

THE GOVERNOR

His relations to the crown 3
His commissions and instructions 3
His territorial powers and duties 3
His general administrative powers and duties 4
His military powers and duties 7
His law-making powers and duties 7
His judicial powers and duties 8
The character and administration of Burrington 10
The character and administration of Johnston 15
The character and administration of Dobbs 19
The character and administration of Tryon 23
The character and administration of Martin 27
The efficiency of the governor 29

CHAPTER II

THE COUNCIL

The relations of the governor to the council 31
How the council was provided for 31
Its executive and legislative functions 32
Its territorial powers and duties 32
Its general administration powers and duties 32
Its judicial powers and duties 33
Its legislative powers and duties 34
Its efficiency as an executive and legislative body 34

The council and Burrington 36
The council and Johnston 37
The council and Dobbs 37
The council and Tryon 37
The council and Martin 38
The character of the most prominent councillors 38

CHAPTER III

THE LOWER HOUSE OF THE LEGISLATURE

How provided for 40
Its privileges from the crown 40
The privileges which it claimed apart from the crown 41
Its suffrage 42
The number of representatives 43
Its territorial powers and duties 45
Its general administrative powers and duties 46
Its powers and duties of defence 46
Its judicial powers and duties 47
Its law-making powers and duties 48
Its efficiency 48

CHAPTER IV

THE CONFLICTS BETWEEN THE EXECUTIVE AND THE LOWER HOUSE

Their general position toward each other and the crown 50
Their conflicts chiefly of a constitutional nature 50
Land: the governor and the lower house 51
Land: the council and the lower house 53
Fees: the governor and the lower house 54
Fees: The council and the lower house 56
Money—treasurer: the governor and the lower house 57
Money—treasurer: the council and the lower house 61
Agent: the governor and the lower house 62
Agent: the council and the lower house 63
Courts and judges: the governer and the lower house 64
Courts and judges: the conncil and the lower house 67
Constitutional points: the governor and the lower house 69
Constitutional points: the council and the lower house 70
Conclusion 71

INTRODUCTION.

North Carolina became a royal province in 1729, after having been a proprietary government since 1663.[1] It was still a poor and small colony when the crown assumed control, having a population of about 30,000 whites and 6,000 negroes;[2] and these lived within seventy-five miles of the sea-coast. The proprietary government was in many respects like the royal. It had its executive department—the governor and the council—both being appointed, commissioned and instructed, directly or indirectly, by the proprietors. It had its legislature—the governor, the council and the lower house. The members of the latter body were elected by the citizens of the province and represented their ideas and sentiments. The councillors, who had equal, and in some respects greater, legislative powers and privileges with the members of the lower house, being chosen by the proprietors, stood for the proprietary interests. The governor had, theoretically, the power of calling, adjourning, proroguing or dissolving the legislature; and, in theory, the power of vetoing any bill passed by the two houses. There was also a judicial system under the proprietors.[3]

During the whole proprietary period, and especially from 1677 to 1715, there was much disorder and confusion in the government. The proprietors never paid much attention to the northern part of their possessions; their chief interests were in the southern part—South Carolina. Those who were appointed to be the chief executives of North Carolina were very often men of little intelligence and inferior character. They were soon involved in quarrels with the council, the lower house and the other officers, and were frequently driven from the province in disgrace. The The colonists were in the meantime living in peace for the most part, independent to a great extent of each other and of the government; they did not care very seriously for the government as long as they were left alone in their ease and independence. But when the government became a burden to them or restricted their freedom, they attempted to overthrow

1 C. R. II, preface, p. III; C. R. I-II, passim.
2 C. R. III, 433.
3 C. R. I-II, passim.

it, or at least, to control it. The perfectly natural consequences were that the colonists acquired a large amount of self-government during the proprietary period, and after they became crown colonists they still insisted upon many of the rights and privileges which they had enjoyed during the past fifty years.[1]

When, in 1729, the proprietors sold to the crown seven-eighths of their land and gave up all their rights of government and the province became royal, there was little change in the governmental machinery in its outward form. There was still the governor, the council, the lower house and the judicial system. The chief difference was as to the immediate source of power and as to the greater efficiency of administration, the crown now taking the place of the proprietors and governing the province directly.[2] In the following pages the executive and legislative departments of this crown government and their relations will be discussed.

1 C. R. I-II, passim.

2 C. R. II-III, passim.

CHAPTER I.

THE GOVERNOR.

The government of an English royal province in the eighteenth century was in form much like that of the mother country. In all the royal provinces the crown was the chief executive and the ultimate source of governmental powers. It delegated its authority to agents who resided in the provinces. Its executive power was bestowed on an officer known as the governor. Each royal province had such an officer, and his powers and duties were much the same in all the provinces. The governor was appointed by the crown, with an indefinite tenure of office, and was therefore responsible to the crown for all of his acts, and not to the people of the province. Authority was conveyed to him through a commission. This was issued at the appointment of the governor, and was always a public document.

At the appointment of the governor and from time to time thereafter, instructions were also issued by the crown for his guidance. They contained specific directions for him and the council, and the governor at times sent copies of certain clauses to the lower house. He was not legally bound to do this, but it was done occasionally in order to conciliate the representatives of the people.

These commissions and instructions served the people of a royal province as charters, and the governor could do little otherwise than according to them. He had some discretionary powers, but these were limited and temporary; for his acts of discretion he might be called into account by the crown officers in England.

By the advice and consent of the council, the governor was empowered to grant lands according to the terms made by the crown, or according to the terms of the acts of the legislature which the crown had approved. These grants, when sealed with the seal of the province and recorded in the land office, which was created by the crown, were legal as against all persons, even against the king himself. The governor was ordered to exercise a careful oversight over the settlement of all lands granted by the crown; he could not allow larger grants than could be well settled and

cultivated. He was forbidden to make any grants of land without a clause reserving the right to vacate them unless the quit-rents were paid and cultivation properly carried on. He was also directed to secure a permanent revenue from the lands granted. Many attempts were made by the governor to execute these powers, but they were only partially successful. Over lands which escheated to the crown, or were forfeited, he was not given the power of final disposal until he had transmitted an account of them to the authorities in England and had received specific instructions from them in return.[1]

The governor, with the advice and consent of the council, appointed to all vacancies in the land office, and, in co-operation with the two houses of the legislature, passed all the laws in regard to registration, alienation, transfer, title by occupation, validity of patents, resurvey, escheat, rent-rolls, and the number of acres to be granted to any one person.[2] Quit-rents and the conditions of escheat and forfeiture neither he nor the legislature could determine, as these were reserved as the crown's rights. But he and the council decided whether lands had been settled according to the terms of the grants and whether they escheated or were forfeited. Much of the work of the executive department was of this nature, hearing petitions for regrants of lands escheated or forfeited.[3] It was the duty of the governor to establish the court of exchequer and court of claims, for the trial of cases arising from lands or their revenue.

The governor had many general administrative powers and duties. He was the head of the whole administrative machinery of the province, and in that capacity watched all the parts of the system, and, so far as possible, directed its movements. His first duty, after arriving in the province, was to publish his commission and take all the oaths required by law and subscribe the test. He took the oaths of allegiance and supremacy to the king, of abjuration against the pretender, of office as governor of North Carolina, of office as governor of any royal province, and subscribed a declaration against the doctrine of transubstantiation. These oaths show that he was to serve two different parties, the crown and the people of the province. But as the crown, not the people, imposed the oaths upon him, he was legally bound to serve the crown's interests, even at the expense of the people.[4]

1 C. R. III, 90-118, 496,-98; V, 1103-44; VII, 137-42.
2 Law Revisals, passim.
3 C. R. III-IX, passim.
4 C. R. III, 66-73.

He must administer the oaths and test to all the members of the provincial council, and by this the councillors were made agents of the crown. He was given full power to suspend any councillor for sufficient cause, and it was his duty to keep the board of trade informed of any vacancy in the council, which the crown had appointed. If the number of the council was less than seven, he was authorized to appoint to vacancies for the time, until the board expressed its opinion; he could not fill vacancies if the membership was as large as seven. He was instructed to keep the board of trade supplied with a list of twelve persons fit for appointment as councillors. He could not increase the number of the council nor could he suspend any councillor without a good and sufficient reason, and this must be done with the consent of a majority of the council. When he suspended any councillor he must send a full account of it to the board of trade and crown, which alone could render the final judgment. In case it became necessary for him to suspend a councillor, for reasons which he could not communicate to the council, he was given the power to do so, but he must at once transmit a full account of his action to the authorities at home.[1]

The governor was given the powers and duties of keeping the seal of the province; of administering the oath in reference to his majesty's person to whomsoever he saw fit; of appointing certain officers and requiring them to take the oaths and test; of issuing out all monies raised by acts of the assembly and expending the same for the support of the government in accordance with the laws of the province; of appointing all fairs, marts, markets, ports and harbors; of seeing that all the officers and ministers of the province were obedient to the chief executive.[2] He was to investigate complaints and charges against former governors, and to look into the official conduct of all the officers whenever it became necessary. He was given a careful oversight of the execution of the acts of trade and, in the absence of the surveyor general of customs, he was directed to fill all vacancies, though temporarily, in his office.[3]

He was instructed to grant full liberty of conscience to all, excepting papists, upon the condition that those enjoying the same gave no offence to good government; to see that God was devoutly worshipped in the whole province; that the book of common prayer was read on every Sabbath and

1 C. R. III, 90-118, 496-98; V, 1103-44.

2 C. R. III, 69-73.

3 C. R. III, 103-09, 496-98; V, 1103-44; VII, 137-42.

holiday, that the sacrament was administered according to the rites of the church of England, and that churches were kept up, ministers and parish work maintained. He should not allow any minister to take a benefice unless he had a certificate from the bishop of London. He was ordered to allow the bishop of London ecclesiastical control in all matters excepting the collating to benefices, granting licenses of marriage and the probating of wills, these being reserved as the governor's exclusive right. He could not permit any schoolmaster to teach unless he had a licence from the said bishop, or any other person without a license from the governor of the province. It was his duty to aid the bishop of London in all possible ways; to pass a law through the general assembly against blasphemy, profanity, adultery, fornication, incest, profaning the Lord's day, swearing and drunkenness,and to recommend that the assembly should erect and support public schools; to look after the welfare of the Indians which were located within the province.[1] It was likewise his duty to discourage and restrain any attempts which might be made to establish manufactures or trades in the province, which would in any way be prejudicial to the kingdom of England.[2] And lastly he was enjoined to secure the passage of certain laws which would add to the efficiency of the administrative system, and several were passed by the legislature for this purpose, but frequently these were introduced to please the people rather than to increase the efficiency of the royal government.[3]

The governor was given these general powers for no definite time, but held them always at the pleasure of the crown.[4] In administering them he was under many limitations. Burrington and Johnston were directed to render full and accurate accounts of their acts of general administration to the secretary of state and the board of trade. Dobbs and his successors were instructed to correspond with the secretary of state only when affairs demanded very immediate attention from the crown, otherwise with the board of trade.[5] This meant that the board of trade was to have the larger part of the administration of colonial affairs and that the governor was to become their agent to a large extent. The commissions which he issued to the judges, justices of the peace and other officers must contain a clause

1 C. R. III, 109-11.
2 C. R. VI, 559.
3 Law Revisals, passim.
4 C. R. III, 69-73.
5 C. R. V, 1103-44.

stating they were held during the pleasure of the crown. He was forbidden to fill any patent office, to which the crown had the right of appointing by a warrant, except upon a vacancy or the suspension of any such officer by himself, and that for the time only. This provision placed a great limitation upon the governor's power of appointing to office, as the chief officials of the province were patent officers: chief justice, secretary, attorney-general, provost-marshal, and the councillors.[1]

The governor had all the powers that belonged to a captain general or commander-in-chief: to levy, arm, muster, and command all persons residing in the province; to march or embark them for the purpose of resisting an enemy whenever occasion demanded it; to transport the North Carolina militia and soldiers to any other American colony, if needed for their defence. He was given the power to execute martial law during the time of invasion, or at any other time when by the laws of England it might be executed; by the advice and consent of the council to build and supply forts, to appoint and commission captains, lieutenants, masters of shipf, commanders and all the officers of martial law, according to 13 Charles II. He was directed to require the sheriffs to use all lawful means to keep the peace and to put down insurrections or riots; and he could lead the militia against those taking part in such actions.[2] The governor was also vice-admiral, and was given all the powers and duties of such an officer.[3]

In all matters of defence the governor's powers were less limited than in any other of his functions. This was very natural, as his province was subject to attacks by sea, by land from without, and by the Indians located within. Under these conditions it was necessary that the province have the best possible system of defence, and in order to accomplish this the crown delegated to the governor full military and naval powers. In civil affairs matters were not so pressing that they could not be considered by the board of trade and crown before a general decision was reached. In defence the governor and the council must have large powers and much discretion.

The governor was ordered to call a general assembly whenever occasion demanded it, and he and the council were the judges of the necessity. He

1 C. R. III, 80, 105-07, 498.
2 C. R. III, 66-73; VIII, 192-93.
3 C. R. III, 212.

was instructed to make laws and ordinances for the welfare of the province and the benefit of the crown, provided that they were not repugnant to the laws of England. This always gave the final decision to the crown officers in England, and consequently made the governor only an agent. All the laws and ordinances passed by the assembly and assented to by himself must be sent to the crown within three months after their passing, for approval or disapproval. The governor had a negative voice in the making of laws and ordinances by the assembly, and no laws could be passed without his consent. He could prorogue or dissolve the assembly to prevent the passing of certain bills whenever he and the council deemed it expedient.[1]

He could not determine the manner of electing representives, the number of members and how many should constitute a quorum; these were all defined in his instructions. It was his duty, however, to see that the instructions on these points were carried out. He was forbidden to assent to any act of the legislature whereby its duration might be limited or ascertained, its number increased or diminished, the qualifications of the electors or of the representatives fixed or altered inconsistently with the crown's rights. Neither could he assent to any act for a gift or present from the assembly to himself.[2]

The governor alone could prorogue or dissolve the assembly, though as a rule he consulted the wishes of the council as to when he should do this. In his power of assenting to or rejecting bills he was much limited by the requirement that he must send to the king and board of trade his reasons for so doing. Quite a number of the acts assented to by him were disallowed by the crown. This was done in the case of acts passed in 1739, 1740, 1754, 1756, 1765, 1768, 1770.[3] He was under greater restrictions and had less discretion in his law making powers than in any other of his functions. His land grants and measures of defence, of general administration and justice, were not sent to the home government; he merely made reports concerning them. But the acts of the legislature, to which he had given his assent, were examined by the crown officers in England.

The governor also had judicial duties. He was commanded to erect and constitute such courts of law and equity as he and the council deemed

1 C. R. III, 66-73.

2 C. R. V, 1103-44; VII, 137-42; VIII, 512-16.

3 Law Revisals, Passim.

necessary for hearing and determining all cases, civil and criminal; to have the oaths and test administered to all persons connected with such courts, to appoint judges—excepting the chief justice whom the crown appointed—commissioners of oyer and terminer, and justices of the peace; to pardon fines and forfeitures, when necessary, except in the case of treason and wilful murder, when he could only grant a reprieve until the royal pleasure was known.[1]

In order to avoid long imprisonment he was ordered to appoint two courts of oyer and terminer to be held yearly; to see that all prisoners in case of treason or felony had free liberty to petition in open court for their trials; to secure the passage of an act by which the value of man's estate requisite to entitle him to the privilege of jury service should be determined; to see that no man's life, member, freehold or goods, was taken or harmed otherwise than by the established laws. He was directed to allow appeals from the courts of justice to himself in the council, in civil causes when the value appealed for should exceed one hundred pounds sterling. He was to allow appeals to the king in council in all cases of fines for misdemeanors in which the amount exceeded one hundred pounds sterling.[2]

There were many limitations upon his judicial powers. He could not displace any judges or justice without a good and sufficient reason. The board of trade and crown alone could finally decide what constituted a sufficient reason. He was not allowed to express any limitation of time in the commissions which he issued to judges or justices; they must always be for pleasure. Neither he nor his deputy could execute any of the offices of judge or justice. He was not permitted to abolish any court already erected without special leave and order from the crown. It was his duty to send the board of trade and crown a full account of all the courts in the province, with their privileges, powers and duties. He could not allow any court of judicature to adjourn excepting upon good reasons. He was instructed to see that all persons committed to prison, except for treason and felony, had the immediate privilege of habeas corpus, and that no person set at large by an habeas corpus was recommitted for the same offence except by the court in which he was bound to appear.[2] It was not within the power of the governor to assent to laws which appointed judges for

1 C. R. III, 66-73.
2 C. R. III, 90-118.
3 C. R. III, 90-118.

good behavior, or to grant commissions to those thus appointed by acts of the legislature.[1]

Such were the constitutional powers and duties of the governor. In discharging these he had to look to the interest and welfare of two different parties—the crown and the colonists. He recieved his powers from the king and was legally responsible to him only. He was intrusted with the administration of the affairs of the colonists, and was therefore indirectly responsible to them. By virtue of the fact that they bore the burdens of the government, paid the taxes, constituted the militia of the province and supplied its necessities, they exercised great influence over him. When he insisted upon acting to the full extent of his constitutional powers and exalted the royal rights and prerogatives, they stubbornly resisted him. When he yielded to any great extent to their assertion of rights and privileges independent of the crown, the home government censured him. The position of the governor was therefore not a pleasant one, especially when the colonists had been accustomed to act without much restraint, as was the case during the period of the proprietary government.

George Burrington, Esquire, was the first royal governor. It was his peculiar duty to show the colonists what a royal government was. He was appointed and received his commission and instructions in 1730,[2] but did not begin the discharge of his duties until February 25, 1731.[3] Sir Richard Everard, who was the last governor under the proprietors, was retained by the crown as acting governor from 1729 to 1731.[4] Burrington had been one of the proprietary governors, and as such had taken the oaths January 15, 1724.[5] As a governor under the proprietors he became much disliked, at least by many of the political leaders of the province. Chief Justice Gale went to England as their agent and made many serious charges against him. These charges, though supported by seven out of the ten councillors, were much exaggerated and even false in several points, but they were sufficient to cause his removal in 1725.[6] He and his opponents had indulged in very severe language toward each other, rogue and villain being very common epithets, and after his displacement as proprietary governor many

1 C. R. VII, 137-42.
2 C. R. III, 65, 66, 74, 86, 87, 118-19.
3 C. R. III, 211.
4 C. R. II, 566; III, 2-5, 25-26, 31, 74.
5 C. R. II, 515.
6 C. R. II, 559-62, 566.

bills of indictment were brought against him for misconduct both as a citizen and as the chief executive. As he left the province soon after his removal, he never appeared to answer them. They were continued for several successive courts, but finally disappeared with an entry of *noli prosequi*. Though he had been very unpopular with the political leaders under the proprietors, his appointment as the first royal governor was hailed with pleasure[1] by many of the people, who appear to have taken little part in preferring charges against him during his first administration. The lower house of the first assembly which met under Everard sent an address to the proprietors, in which they declared that most of the charges of Gale and his friends were false and malicious, and that the province had prospered and grown much under Burrington's care and industry.[2]

Burrington was an Englishman, of Devonshire.[3] The time of his birth is not known exactly, but from statements of his one would judge that he was born about 1685. He was therefore about forty-six years of age when he became the royal governor of North Carolina. He was a man of some education and of some good qualities. He exalted the royal rights, ignored most of the political claims of the colonists, was violent in temper and speech, enjoyed a quarrel with his fellow officers, was a perfect master of abusive language, and was obstinate to a great degree, not being able to tolerate any difference of opinion. At the same time he was active and self-sacrificing in his attempts to promote the material interests of the province. As to his life before he became a governor under the proprietors almost nothing is known. How he secured his appointment as royal governor, after he had been removed by the proprietors because of many complaints of misconduct, is not known, but it seems that he had considerable influence with the Duke of Newcastle, secretary of state for the southern department.[4]

His welcome as the first royal governor did not last long. He soon became involved in conflicts and quarrels with the chief justice, attorney-general, judge of admiralty, secretary, council and lower house. Many of these officers were selfish, obstinate and uncompromising. They cared little for the royal government and demanded of him rights and privileges

1 C. R. II, 546, 647, 817; III, 134-35, 137-38.
2 C. R. II, 577-78.
3 C. R. II, 480-81.
4 C. R. III, passim.

which he could not legally grant. It soon became their custom to hinder him in practically all of his attempts to administer the affairs of the province. His administration was therefore one of great confusion and disorder. He and his opponents indulged in much personal abuse, and even went to the extremes at times of making threats against each others' lives.[1]

His first legislature, that of1731, during the first few days of the session, praised his ability, care and industry. But in a few weeks he was denouncing its members and calling them rascals and thieves. He had attempted to induce them to pass acts according to his instructions from the crown, but they insisted upon acting according to the laws passed by the legislature under the proprietors and during the period 1729-1731, which acts the crown had not approved.[2] After several prorogations he dissolved the assembly without coming to an agreement and without passing any laws. He was then determined not to call another assembly for a considerable period, hoping that the members would change their position and yield to his requests. His second legislature did not meet until 1733. But there was no sign of a change on the part of the people or their representatives. The assembly at once declared that Burrington was oppressing the colonists, ignoring justice, using force, and governing in the most arbitrary manner. Because of this declaration they were dissolved. He called his third and last legislature in 1734, but was displaced by Johnston before he had time to become involved in a quarrel with them.[3]

His relations with the councillors and other officers were even less aggreeable than those with the lower house. Within three months after his arrival he was in a bitter conflict with three councillors—Smith, Ashe and Edmund Porter, and also with the secretary and attorney-general. He was obstinate and intolerant toward them, and they showed about the same disposition toward him. Neither side would make any advances toward a compromise, and the conflict went on. The governor was left almost alone and his opponents used every opportunity to hinder his administration. He attempted to settle and govern the province according to his commission and instructions, but most of the other officers insisted upon constitutional rights independent of his instructions.[4] When he began his administration there was really little government- The general court

1 C. R. III, passim.
2 C. R. III, 331-35
3 C. R. III, 257-325, 536-611, 634-43.
4 C. R. III, 139-41.

had been set aside and some of the district courts discontinued. The admiralty court had been doing all kinds of business. He made several attempts to restore the province to a good government.[1] By 1733 he seems to have accomplished something at least in bringing the province to a condition of peace, quiet and prosperity.[2] In the meantime Porter, Ashe and Secretary Rice were sending reports to the board of trade against his administration. They accused him of usurping powers which did not belong to him. He had suspended Porter from the council, and his instructions gave him, as he thought, power to do this. He had created new precincts. They denied that he had the power to do either. He had granted lands, as he thought, according to the terms of his instructions. They declared that he had no power to grant lands at such high terms.[3] These gentlemen with the attorney-general also accused him of using arbitrary powers in regard to the council, courts of justice, land and the colonists.[4]

A great deal of bad feeling was shown by Burrington and his opponents. Who was the more to blame in this conflict it is difficult to say. Both sides went to great extremes in their acts, and especially in their denunciation of each other. The board of trade wrote to Burrington in 1732 that he had perhaps nominated new councillors when there were as many as seven, the number above which he could not nominate, but they were not able to come to an absolutely certain conviction on the matter. They did state that his conduct with the lower house had been irregular and that his language towards them had been intimidating. On the other hand the board of trade recognized that both the lower house and the other officers had claimed more rights than the governor could grant them.[5]

His quarrels with his fellow officers show the weakest side of Burrington, though he was certainly not entirely responsible for them. In spite of his many quarrels, he did much for the welfare of the province. His own statements, as well as those from his enemies, show that he made a close study of the material conditions of the province, that he understood the character and needs of the colonists to a considerable extent, and that he accomplished much for their welfare.[6] He looked carefully after the

1 C. R. III, 142-56.
2 C. R. III, 429-37.
3 C. R. III, 325-31, 439-75.
4 C. R. III, 356-82.
5 C. R. III, 351-55.
6 C. R. III, 338ff.

settlement of the lands and the making of internal improvements. He laid out roads, built bridges, sounded and explored several of the rivers. And for this, he states, he received only a vote of thanks from the assembly.[1] That the people appreciated his energy exercised for their welfare and that the province grew and prospered under him there are many proofs.[2] In his opening speeches to the assembly he asked them to act for the welfare of the whole province, to keep the bills of credit at par, to make the judicial system as efficient and convenient as possible, to appoint an agent who should reside in London and act for the province, to settle his salary, to provide an effectual way for direct trade with Europe and the West Indies, to support the church and clergy, and to pass acts requiring the proper registration of lands.[3] These requests show that he was working for the welfare of the colony as well as that of the crown, and that he understood the best needs of the colonists. In his speeches to the legislatures of 1733 and 1734 he did complain a good deal about the fact that the former assemblies had accomplished nothing, and about their constitutional claims which he could not grant. While his language was not very diplomatic or politic, still for the most part it was not unkind.

There were practically no complaints of his failure to act, but many of his acting in an arbitrary way. He sent long and frequent letters and reports to the authorities at home, as he was instructed to do. He seems to have appointed to all the offices within his power and to have looked carefully after the general administration. While no laws were passed under him, still this was not entirely his fault, as he held three assemblies. He made no records of lands granted by him. That he issued warrants and patents for lands is evident from what his opponents said about his administration.[4] He did act in a very independent and arbitrary way at times, but mainly according to his interpretation of his powers and duties. The members of the assembly and some of the councillors relied upon the charters of 1663 and 1665 for their constitutional rights, and resisted most of his attempts to govern according to royal prerogative and rights. They had long been accustomed to doing as they pleased in governmental affairs, and therefore demanded many rights and privileges for themselves

1 C. R. III, 29, 135, 287, 434-36, 577, 617.

2 C. R. III, 194, 262; IV., 18-22.

3 C. R. III, 257-58, 540-42, 636.

4 Revisal, 1752; C. R. III, 257-325, 457-75, 540-61, 634-43.

which he could not grant.[1] His great intolerance of differences of opinion and violent conduct made for himself many strong enemies: Nathaniel Rice, John B. Ashe, Edmund Porter, John Montgomery, and other leaders in the colony, became and remained his opponents, and these were men whose influence he needed very much.[2] But even had he been very diplomatic, if at the same time he had insisted upon the royal rights, conflicts on fundamental and constitutional questions would have come. By a different personal conduct he might have avoided the personal struggles and quarrels, but it was almost inevitable that he and the legislature should get into grave conflicts. Their points of view on governmental questions were very different and would necessarily lead to conflicts.

Burrington was promised out of the quit-rents a salary of seven hundred pounds yearly. The assembly did not and would not accept a plan for collecting these, and consequently he received very little toward his salary or expenses. He asked the crown for his expenses in making surveys and improvements, but his request was refused.[3]

Burrington's successor, Gabriel Johnston, Esquire, was appointed and commissioned in 1733, but did not assume control of provincial affairs until November, 1734. He remained in office until his death, July 17, 1752.[4] He was by birth and education a Scotchman. His education, especially in the ancient languages, was fine, and he served for a time as professor of oriental languages in the University of St. Andrews. It is stated by some authorities that he wrote several articles on political and governmental questions, and that it was due to these that he was appointed governor of North Carolina.[5]

Most of the North Carolina historians have praised his activity and character. The records which he left seem to indicate that he has been praised too highly. He governed the province through a long period, and under him it grew much in population and prosperity. It is estimated that there were about 50,000 whites and negroes in 1735 and about 90,000 in 1752.[6] An investigation into the causes of this increase in population reveals the fact that Johnston had practically nothing to do with it. He

1 C. R. III, 262, 265, 267, 270-72.
2 C. R. III, 377, 379, 385, 616, 617.
3 C. R. III, 625, 626; preface p. X, XI.
4 C. R. III, 438-39, 496-500, 642-43; IV, 1314,
5 C. R. IV, preface p. III.
6 C. R. IV, preface p. VII, XX, XXI.

was evidently a man of many good qualities. He was not profane as was Burrington, neither was he drunken or violent in temper. He certainly did not know how to abuse his opponents as did Burrington. As a man he presents a great contrast to his predecessor, but as a governor he was in several respects less successful than Burrington; and was also careless in many matters.

His administration was characterized by less conflict than that of Burrington, between the governor and the other officers. There was practical agreement on many points between himself and most of the officers. When he began there was open hostility between the governor and practically all of the other officers. By the end of 1735 this had to a large extent ceased. In 1734 little had been done toward putting in operation the royal government. Burrington had done something toward this, but not much; and what he had done was accomplished wholly by the executive, as he had never been able to influence the legislature to take any part in the new government. The collection of quit-rents due to the crown had not been provided for, and nothing had been done to improve the system of defence or militia.[1] Johnston had therefore many difficult tasks. Some of them he undertook with intelligence and energy, to others he paid little attention.

His opening speech to the assembly of 1735 shows that he was interested in the true welfare of the crown and of the colonists. He told them that he had called an early meeting of the legislature in order to put an end to the great confusion in provincial affairs. He made no requests for himself, but only for good government. He asked them to consider the question of quit-rents and currency, and to provide for the equitable collection of the one and to maintain the par value of the other. He further asked them to provide for the commercial welfare of the province and for the defence and militia.[2] The spirit of this speech and the manner in which he delivered it give sufficient evidence that he desired harmony and good feeling. He assured the assembly that they might examine all accounts of expenditures of public monies. In 1739 he again begged them to lay aside all disputes and to act in harmony. He urged them to provide for better public worship; also for the collection of all the provincial laws so that they might be better known to the colonists, and for more efficient trade facilities.[3]

1 C. R. IV, 23-25, 242-45.
2 C. R. IV, 77-79.
3 C. R. IV, 356-57.

In 1744 he asked the assembly to assign places in which the courts should be held.[1] His conflicts with the upper and lower houses of the legislature were not very many or serious. Between 1738 and 1750 seven laws concerning land were passed.[2] He was, to be sure, not wholly responsible for these. Some of them he requested, others were passed by the legislature and merely assented to by him. He secured the passage of three important militia acts, those of 1740, 1746, 1749.[3] He held nineteen sessions of the legislature and assented to one hundred and thirty-one public acts, and only three of these were repealed by the crown.[4] A study of these acts and the part he took in their passage reveals the fact that he did not have very much to do with them and that in many cases he gave considerable privileges to the legislature. Several of these acts were intended more to secure the interests of the people than the efficiency of the crown government.

Johnston's relations with the council as an executive body were practically harmonious. He held many sessions of this body and considered a variety of subjects, but the chief business of the council under him was the hearing of petitions for grants of land and the issuing of warrants for such grants.[5]

He failed to keep the home authorities well informed as to colonial matters, especially during the last ten years of his administration. In his letters to the board of trade or secretary of state he never made any important statements concerning the growth of population, the prosperity of the colonists in farming, manufacturing or trade. In this he was far less active than Burrington or Dobbs. In 1745 the board of trade complained that it had been more than three years since they had received a letter from him. They further complained of not receiving any reports on provincial matters.[6] During the first six years of his administration he wrote many letters to the board, but after 1742 he was apparently very negligent in this. The board did not receive a single letter or report from him between December, 1741, and June, 1746.[7] He wrote to them in 1747 and 1748 that he had been writing regularly, always sending duplicates.[8]

1 C. R. IV, 720-21.
2 Revisal, 1752, 85, 90, 138, 155, 275, 285, 329.
3 Revisal, 1752, 119, 215, 305.
4 Revisal, 1752, 79-370, 85, 90, 116.
5 C. R. IV, passim; Ms. Warrants and Grants.
6 C. R. IV, 756-57.
7 C. R. IV, 797.
8 C. R. IV, 797, 869.

In this he was either making a false statement or the facilities for carrying letters were far less efficient from 1741 to 1746 than at any other time during the royal government. It is probable however that the war which was then going on did well nigh destroy the facilities for carrying mail. In December 1748 Corbin, Dobbs and others sent a memorial to the Duke of Bedford, secretary of state for the southern department, in which it was stated that Johnston had long been very negligent in keeping the home authorities informed concerning the province. This memorial further charged that he had acted very arbitrarily in judicial matters, that he had assented to the issue of paper bills of credit when he had been specifically instructed not do so, and that the government of the province was in great confusion.[1] At about the same time the attorney-general, Thomas Child, made like charges to the home government.[2] James Abercromby, agent, during the early part of the next year declared to the board of trade that the above named complaints and charges had originated in England, not in North Carolina, and that they were false.[3] There is some internal evidence in the two memorials of complaint against Johnston that Abercromby's statement was in part true. On February 20, 1749, the board of trade made a full report on the memorials. This report stated that no letters had been received between December, 1741, and June, 1746, and no journals of the legislature during this time excepting those of the lower house for 1744, 1745, and 1746. The report also stated that the evidence then available to the board seemed to show that the memoralists against Johnston were partially correct.[4] Johnston in writing to the board, September, 1751, declared that he had sent the journals of the legislature regularly.[5]

It is difficult to judge what the truth is in regard to this charge of negligence on the part of Johnston. Shall we believe the reports of the board of trade or the written statements of Johnston? The board has stated that no letters or journals were received by them during certain years, and Johnston has declared in writing that he sent them. The records, as they now exist in England, show that the board was correct in its statements. Still Johnston may be correct, as his letters and reports might have miscarried, but this does not appear to be very probable. It is most probable

1 C. R. IV, 926.
2 C. R. IV, 928.
3 C. R. IV, 928-30.
4 C. R. IV, 930-31, 935-36, 941.
5 C. R. IV, 1075.

that Johnston wrote few letters during his old age, and that some of those which he did write miscarried. Though he perhaps neglected to keep the home authorities well and frequently informed during the last ten years of his term, he did not fail to attend to his duties towards the colonists; he held twelve sessions of the legislature after 1742 and passed several of the most important acts of his administration between 1742 and 1750.

He, like Burrington, received very little salary. In 1746, in writing to the board of trade he stated that he had received no pay during the past eight years.[1] Even as late as 1791 there was still due to his family of his salary while governor over two thousand pounds.[2]

On the death of Johnston, Nathaniel Rice, the first councillor, became the acting governor. He died January 29, 1753. Matthew Rowan, the next councillor, then assumed control[3] and was the acting chief executive until Dobbs arrived. Rowan was very active and intelligent during his short administration. He sent to the home authorities good and pointed reports; and these were well recieved by the board of trade. He held several different meetings of the council for executive purposes, and one assembly which passed seven public acts.[4]

Johnston's successor, Arthur Dobbs, Esquire, was commissioned early in 1753, but did not reach the province until late in 1754. He took the oaths and test November 1, 1754, and remained in office until his death, March 28, 1765.[5] He was an Irishman by birth. The exact date of his birth is not known, but it was probably before 1690. In 1720 he was high sheriff of Antrim county and later became a member of the Irish parliament. He was also engineer and surveyor general of Ireland under Robert Walpole's administration as the chief minister of England. He was the author of books on the improvement and trade of his native country. It appears that his appointment as governor of North Carolina was largely due to his former services for the crown and to the fact that he had been an officer of considerable ability and fine character.[6] When he began his duties as governor he was at least sixty-five years of age and knew nothing about the colonists, their ideas and conditions. He was wholly

1 C. R. IV, 792-93.
2 The New Annual Register, 1791, 128.
3 C. R. IV, 1314; V, 17-18.
4 C. R. V, 17, 18, 23-25, 29, 37, 38-77, 108-09, 123-24; Revisal, 1765, II, 17.
5 C. R. V, 144g; VI, 1320.
6 C. R. V, preface p. IV-V.

ignorant of the real resources of the province. Still he was received with much pleasure, and at once began to make himself acquainted with his new surroundings. He had to govern at a critical time, when the English were struggling with the French for the mastery of North America, when the cause of Protestantism was in conflict with Romanism, and when most of the Indians were in arms either against the English or French. He entered into the conflict with much activity and zeal. Under his command North Carolina did much for the cause of the crown. He was a strong supporter of the rights and privileges of the crown, even to the disadvantage of the colonists. Though a strong prerogative governor, he showed much intelligence in his relation to the province until about 1760, when poor health began to impair his ability. From this until 1765 he was much more arbitrary and far less active. It was during the last four years that the authorities in England made complaints about his obstinate policy and his very poor reports.[1] On account of poor health he made a request of the crown for a leave of absence for one year. This leave was readily granted and Tryon was commissioned as lieutenant-governor, April 26, 1764. His commission gave him the power of acting as governor in the absence or upon the death of Dobbs.[2] Tryon arrived in the province in October, but Dobbs did not at once take his leave. He remained as the acting gevernor until his death.[3]

Dobbs confessed his ignorance of the province and at once after taking the oaths began to make an investigation into provincial affairs. He made a special examination of the defences of the colony, and of the position and strength of the Indians located within or on the borders. He made full reports of the conditions, as far as he understood them, to the home government. In 1755, 1756 and 1757, the board of trade in writing to him expressed their great satisfaction of his efforts to explore and defend the colony against the Indians, and of the full reports which he had sent to them. They also assured him that his energy and zeal would receive the king's highest approval. In November 1757 they expressed great pleasure at his success in securing supplies from the legislature to carry on the wars, to defend North Carolina and to aid the other colonies.[4]

When his administration began the province was in a good condition;

1 C. R. V, preface p. VI, VII, VII; C. R. VI, passim.
2 C. R. VI, 1043-44.
3 C. R. VI, 1320.
4 C. R. V, 413-17, 419-20, 563, 748, 786.

there was much activity in agricultural pursuits and much general prosperity. There were about 100,000 people in North Carolina in 1754, and though his term was one of almost constant war, still by 1765 the population had increased to about 125,000.[1] He showed much interest in informing the home authorities about the material conditions of his province, especially during the first five years of his administration. He and the council issued a good many land warrants and grants, but some of them were not judiciously given.[2]

His relations with the lower house of the legislature were cordial until about 1760, and after this there were no very serious quarrels between them. They granted his requests for money without very much discussion until 1760. From 1760 to 1762 they frequently complained of his demands for money and of his whole administration. These complaints were made chiefly because he kept asking for money with which to carry on the war against the French and Indians. He held seventeen assemblies and passed one hundred and fifty-five public acts, only five of which were disallowed by the crown. He passed two good militia laws, only slightly changing the acts of 1746 and 1749. He secured the passage of five fairly good laws concerning land.[3] At almost every session of the legislature from 1754 to 1762 he asked for troops, supplies, fortifications, stores and magazines;[4] the defence of the province and aid to the crown were his chief aims. He insisted on these, even to the neglect of everything else. It was necessary to provide for the defence of the colony, and the legislature agreed with him in this. But to Dobbs it was much more important to aid the other colonies, especially those in the north than to defend or work for the interests solely of North Carolina. To drive the French from North America seemed to him of far more importance than to make North Carolina a very prosperous province. The legislature on the other hand cared much more for their own province and its welfare than they did about the French. To them the defence of the province was the chief object. It owing was to these different points of view that Dobbs and the assembly could not agree in several important affairs, especially from 1760 to 1762. Though he gave his greatest energy and zeal to making war, he still asked the legislature to provide a permanent and suitable

1 C. R. V, preface p. XXX-IX.
2 Ms. Warrants and Grants; C. R. V-VI, passim.
3 Revisal, 1765, I1, 34-386, 35, 70-72, 82-84. 192-97, 211-12, 309-15, 331-32.
4 C. R. V, 233-36, 496, 639, 831; VI, 133, 802.

fund for the governor and government, a better system of teaching religion to the colonists, a more careful collection of the taxes and quit-rents, and a more just financial system.[1] In May 1760 the lower house drew up fourteen resolutions of complaint against his administration.[2] He in a letter to the board of trade of August 3, 1760, defended himself against these charges. One of them was that Dobbs had not judiciously applied the funds granted by the assembly as aids to the crown. He denied this and as the evidence goes to show, he was justified in so doing. To their charge, that he had received one thousand pounds out of the dividend from England to the American colonies and that he had not accounted for the same, he answered that he had been compelled to use this for the troops, as the lower house had not made sufficient provision for them. The other complaints were of a more general nature. The records which both parties left indicate that Dobbs was doing his duty according to his instructions. He was too uncompromising in this at times, but there is no doubt of his sincerity and honesty. While he was making too many claims in favor of prerogative government, the lower house was at the same time claiming rights and privileges which did not constitutionally belong to them.

In some of his extreme demands the board of trade did not sustain him. On April 4, 1761, they in a letter to him declared that he had hindered his majesty's service by insisting too much on trivial points and on the letter of his instructions, that he had not considered sufficiently the difficulties of the situation, and consequently had brought on a dispute with the legislature at a time which above all things demanded harmony. He had claimed the right of nominating an agent to represent the province in England. The lower house also had claimed this as their exclusive right. No agreement could be reached on this, and Dobbs rejected their supply bill because it contained an agent clause at a time when the crown's service demanded the money. The board told him that he had no right to insist on the nomination of the agent, that the lower house had the right to nominate such an officer. They further stated that his rejection of an aid because of their failure to agree was trivial and foolish.[3] From 1761 until the end of his administration the home authorities did not sustain him in several of his acts. During December 1761 the board of trade in a report to the king on three acts passed by the legislature and agreed to by Dobbs in May 1760—

1 C. R. V, 283-36, 496-97, 659-60.
2 C. R. VI, 410-13.
3 C. R. VI, 538-41.

relating to superior courts, inferior courts and orphans,—advised the king to disallow them becuase of the extraordinary clauses on the qualifications of associate judges, the duration of their commissions, and the jurisdictions of the inferior courts. They repremanded Dobbs for assenting to such acts, because they were in direct violation of his instructions. The board of trade again in 1762 wrote to the king that Dobbs in assenting to the vestry and clergy act of 1760 had shown another evidence of inattention to to his instructions.[1] It should be stated that in these acts Dobbs had been under much compulsion from the lower house. He had to consent to some of them in order to secure the passage of any acts at all. In spite of such statements from the board of trade there is much evidence that they and the other officers in England had much respect for Dobbs, though he was now in old age and poor health. Before 1761 they had full sympathy and appreciation for his services, and they continued to respect him to the end. Lord Egremont, secretary of state for the southern department, November 27, 1762, in a letter to him declared that the king was sensible of his great zeal in raising troops for the war.[2]

Concerning his salary he had practically the same experiences as the former governors. On March 29, 1764, he wrote to the board of trade that the lower house had refused to settle a salary on him and to pay the rent of a house for his use.[3] Though they would not provide a definite support for him, both houses had much respect for his administration, even to the end. On November 26, 1764, they made him addresses, in which they declared that he had been wise, steady and uniform in working for his majesty and the province and that his administration had been good and pure.[4]

Upon the death of Dobbs, William Tryon, who had already arrived with a commission as lieutenant-governor, became the chief executive. He was given a commission as governor July 19, 1765, and took the oaths and test on December 20.[5] He remained as the governor until June 30, 1771,[6] when he left to become the governor of the colony of the New York. Tryon was an Englishman by birth and a soldier by profession.

1 C. R. VI, 589-91, 723.
2 C. R. VI, 736.
3 C. R. VI, 1039-41.
4 C. R. VI, 1249, 1316.
5 C. R. VII, 4, 133.
6 C. R. VIII, 627.

He had gone through the ranks of lieutenant-colonel, and after he left North Carolina became colonel, major and major-general. He was a man of much influence at the court. For this reason, as well as for his ability, he secured the appointment as governor of North Carolina.[1] In his relations with the colonists he was shrewd and diplomatic, proud and fond of the show of a soldier's life. He was still young when he came to the province and showed much activity and ability in keeping himself in high favor with its leaders.

In 1767 he wrote to the secretary of state for the southern department a long report on the polity of the province. In this he stated with much clearness how the province was governed, what officers, executive, legislative, judicial, there were, how these performed their duties and what rights and privileges they had.[2] From the standpoint of style and comprehensiveness this is an extraordinary document. It gives evidence that Tryon, though a soldier by profession, knew much of government and politics and that his ability was considerable. It is not strange therefore that the king was highly pleased with such a paper and with his administration up to the time of the writing of it.[3]

It was during his administration that the insurrection known as the war of the Regulation occurred. This was an uprising among the people of the counties of the western part of the province, Orange being the center. These people complained of many and grievous burdens of government, that they were unjustly taxed, and that they were refused justice at the hands of the provincial officers. Tryon was ready to act as the chief executive and as a soldier in keeping the peace of the whole province and in putting down this insurrection. On April 27, 1768, he issued a proclamation to the colonel of the militia of Orange county ordering him to be ready to act against the Regulators in case of need. On the same day he by another proclamation commanded the Regulators to disperse and go to their homes, and gave orders to all officers and citizens to put down the insurrection if the Regulators went to extremes.[4] He made a military expedition to Hillsborough, the official town of Orange county, in September to put an end to the troubles,[5] and again during the early part of 1771.

1 C. R. VIII. preface p. XXXIV-XXXVIII.
2 C. R. VII, 472-91.
3 C. R. VII, 737-38.
4 C. R. VII, 718-19. 721.
5 C. R. VII. 887-88.

The second expedition completely crushed the insurrection of about two thousand men.[1] He put down the Regulators by force of arms, but did nothing to remedy the causes which brought on the uprising.

He made several grants of land[2] and assented to three land acts.[3] In ideas concerning the militia and defence he was not original; he carried out substantially the same policy as Johnston and Dobbs. He held six assemblies and passed one hundred and sixteen public acts.[4] Of these the crown disallowed eight, more than it dissallowed of those passed by Johnston or Dobbs. A study of the laws of Tryon's administration reveals the fact that he did not attempt very seriously to improve the conditions of the province.

In his dealings with the members of the house, as with the other officers, he was very diplomatic and clever, and consequently left no record of serious conflict with any of them. In his opening speeches to the assembly he showed much ability in managing men. He made them understand his wants and requests, but never made opponents of them by the manner in which he spoke. He asked for the continuance of the fortifications at Fort Johnston and for an efficient provision for powder and lead. He asked them to continue the judicial system of Dobbs, to look after the condition of the public finances and to make a better provision for the sheriffs. He urged them to consider the importance of the office of sheriff, to see that more fees were allowed and that better men were appointed to the office. In 1768 he laid before the assembly a full account of the Regulation troubles in the western counties, and asked them to make a careful investigation into the matter, to find out what the causes were, to relieve the insurgents if they suffered real grievances, and especially to provide a military force to put them down. In this recommendation he gave evidence that he was much more anxious for a suitable armed force with which to crush the insurrection than he was for the correction of the abuses. To an assembly in 1770 he made the statement that he would be glad to see a public school established in the western counties for the purpose of teaching and educating the men of the frontier.[5]

He thought that a strong military force would have a good influence upon

1 C. R. VIII, 574-621.
2 Ms. Warrants and Grants.
3 Revisal, 1773, 344, 464, 491.
4 Revisal, 1765, II, 393; Revisal, 1773, 338-495.
5 C. R. VII, 292-95, 890-92; VIII, 283-85.

the colonists, especially those in the west. To him the highest product of good government was a well organized and equipped army. When, in 1767, he surveyed the boundary line for the Cherokee Indians he took along with the surveyors a considerable cavalcade of soldiers. This was done in a time of peace, when there was no longer any fear of the Cherokees, and at a cost to the colonists of about 1490 pounds.[1] Still there was some need of convincing the Indians of the power of the royal government. He was very extravagant in his ideas and consequently was in need of much money either for himself or his government. While his predecessors had received very little of their salary, he by his clever diplomacy obtained about all the money he disired. His military expeditions to the western counties in 1768 and 1771 cost about 44,844 pounds.[2] He was also able to persuade the assembly to build for him a palace at a cost of 15,000 pounds.[3]

Though he had performed no service for the province of a permanent nature, excepting his successful defeat of the Regulators, which while it put down an insurrection of about two thousand poor people and thereby exalted the power of the crown, increased the debt of the colony by almost 50,000 pounds, his departure was much lamented by many of the political leaders. In December 1770 both houses of the legislature made addresses to him, in which they stated that he had done all in his power to aid the province. In July 1771 President Hassell in writing to Secretary Hillsborough declared that no governor had left the province more beloved by the people than Tryon.[4] These complimentary statements from the legislature and the acting chief executive can not be taken with too much seriousness. There is much evidence to show that Tryon made himself very agreeable to many of the colonists, especially the political leaders and influential men, and that he commanded their support and affection to a high degree. But his success in winning the confidence of the officers of the government in England and in the province was due to a very considerable extent to his tact rather than to what he really accomplished. He was successful as a soldier, but in solving the great problems of his administration he accomplished little.

When Tryon left, James Hassell, the first councillor, became the acting

1 C. R. VII, 991-1009.
2 C. R. VII, 887-88; VIII, 574-623.
3 Revisal, 1773, 342-43, 394-95.
4 C. R. VIII, 289-90, 311-12; IX, 9.

governor, and as such took the oaths, July 1, 1771.[1] In December 1770 Josiah Martin, Esquire, was commissioned as Tryon's successor. He did not assume control of the administation until August 12, 1771.[2] He remained in office until the royal government was overthrown by the revolution; and on August 8, 1775, from his majesty's sloop "Cruizer" he issued his last proclamation.[3]

Martin was an Englishman and was about thirty-five years of age when he began his duties as governor. He was a soldier in the British army from 1756 to 1769, when he sold his commission. As a soldier he had served as ensign and major, and had won the rank of lieutenant-colonel.[4] As a governor he was plain, blunt, lacking in tact, and was inclined to exalt prerogative too highly. He never could understand the sentiments and demands of the colonists; he could not see or appreciate their point of view, and was much like Burrington in being intolerant of differences of opinion. To him it was absolutely necessary to carry out, even to the letter, his instructions from the crown. Tryon had been an excellent servant of the crown, and he also knew how to make himself agreeable to many people. In this latter quality Martin was wholly lacking; he could not make himself agreeable to many people. The difficulties of his situation, his lack of tact, his exaltation of the royal prerogative at a time when the colonists were claiming many rights of self government—all caused him much trouble. He began his administration with many difficult problems and tasks. He had to pacify the Regulators whom Tryon had put down by force of arms. He had to face large debts and a poor judicial system; both of which involved problems which Tryon had not solved.

He held three assemblies and passed eighty-nine public acts. The fact that none of these were disallowed by the crown[5] is evidence that he was much respected by the crown officers in England. In his opening speeches to the assembly he recommended several things which were for the true interest of the province. He asked them to provide a good system of militia and defence, to investigate the causes which led to the Regulation war, to remove the abuses, to pardon those guilty of insurrection, and to

1 C. R. IX, 3-4.
2 C. R. VIII, 267, 512-16; IX, 15.
3 C. R. X, 141-51.
4 C. R. IX, preface p. III-IV.
5 Revisal, 1773, 496-566; Revisal, 1791, 270-74.

enact laws for the more efficient administrationof finance and justice.[1] He made no demands for himself, as Tryon was in the habit of doing, but only for the crown's interest in the colony. Though his requests were wholly unselfish and really for the welfare of the province, he and the legislature became involved in many and serious conflicts, especially over fiscal and judicial questions. The legislature insisted upon claims which his instructions compelled him to reject, and he was obstinate in commanding them to agree to the very letter of his instructions. In spite of the fact that eighty-nine public acts were passed and agreed to by him, all the legislative sessions under him were stormy, especially so whenever judicial or fiscal questions came up.

In his struggle with the legislature the home authorities in the main stood by him. The board of trade and crown approved of his zeal and interest.[2] Expressions of this approval came at many different times. Lord Dartmouth, secretary of the American department, in writing to him May 4, 1774, lamented the very bad state of affairs in the province but declared that he and the other authorities highly approved of Martin's acts, especially during the stormy session of the assembly, March, 1774, when he had adjourned it after he saw no hope of success for the royol cause. Again in October of the same year Dartmouth declared to him that the king regarded him as a most faithful servant. In this letter Dartmouth expressed the opinion of the crown in regard to the extreme ideas and demands of the assembly, that they were making unwarrantable encroachments.[3]

After the session of March, 1774, Martin felt that everything was in a very serious condition in the American colonies, and that the people of North Carolina were too much excited over the struggles of the last assembly to call another for the time. The colonists were not to be kept quiet by this means. John Harvey called a provincial congress for August 25, 1774, and the freeholders elected deputies to it.[4] This was done without the consent of the governor and he by a proclamation complained of such revolutionary proceeding.[5] Still the congress met at Newbern at the appointed time. It elected and instructed three delegates to the proposed

1 C. R. IX, 101-03, 397.833.
2 C. R. IX, 277, 618.
3 C. R. IX, 988, 1077.
4 C. R. IX, 1031-41.
5 C. R. IX, 1029-30.

continental congress at Philadelphia and adopted a large number of resolutions, defining their position against the bad government of the crown's ministers.[1] It then adjourned, August 27. The first continental congress asked for a second at Philadelphia in 1775. In February, 1775, John Harvey called for a second provincial congress, to meet April 3.[2] Martin issued a proclamation against this.[3] The election took place and the congress met at Newbern at the designated time in spite of his proclamation.[4] It highly approved of the actions of the first continental congress and chose delegates to the second. This provincial congress met at the same time and place as the assembly which Martin had called. Most of the members of the lower house were also in the congress. Martin could therefore do nothing with the assembly and dissolved it on April 8.[5]

Martin now did not feel safe at Newbern, and in May, 1775, went to Fort Johnston, at the mouth of the Cape Fear river. From this time he was not actual governor, as there was no longer a royal government in the province[6] He saw so much of rebellion and revolution all over the colony that he did not feel safe at Fort Johnston and went on board his his majesty's ship "Cruizer."[7] From the sloop he issued several proclamations, but these were wholly unheeded by the colonists.[8]

Upon the whole, therefore, the royal governors of North Carolina make a fair showing, though they were the agents of an inefficient system. The machinery of English colonial government in the eighteenth century lacked much in unity and dispatch. The board of trade was slow in making its decision on colonial matters, and the law officers of the crown required still more time. The secretaries and the king did not pay very great attention to many matters though important. The records of North Carolina afford much evidence of the carelessness and dilatory habits of the home government. With the exception of the last ten years of Johnston's administration, the governors were careful to keep the crown well informed respecting provincial affairs. During the whole period they attended to the administration of the province with much interest, though at times

1 C. R. IX, 1041-49
2 C. R. IX, 1145.
3 C. R. IX, 1145-46.
4 C. R. IX, 1178-85.
5 C. R. IX, 1178-79, 1187-1205.
6 C. R. IX, 1254-58.
7 C. R. X, 1-69.
8 C. R. X, 141-51.

with little intelligence. They all seemed to have as their chief aim the welfare of the crown and of the province. The records show that they were honest servants; their mistakes were mainly those of judgment. At times they adhered obstinately to the letter of their instructions and in so doing rendered their position and that of the crown weak. They often forgot that the people under the proprietors governed themselves almost without restraint, and often ignored the fact that a people with such a history would not readily yield to prerogative government. So far as actual achievements are concerned, Burrington and Martin did the least. But it must be remembered that Burrington was the first royal governor and that consequently he had to make the first attempts to uphold the royal prerogative, an institution the spirit of which they did not understand or appreciate. Martin was the last governor, and as such had to face the revolutionary spirit then abroad in all the American colonies.

CHAPTER II.

THE COUNCIL.

In the foregoing pages the position of the governor has been discussed. He was the chief executive, but by no means the whole of that department. In exercising his powers and discharging his duties it was necessary for him to consult the council very frequently, and in several matters he could not act without their advice and consent. He was not only restricted by the fact that he must make reports of his acts to the board of trade and crown, but he must also take the advice of his councillors. As a rule the governor's relations with the council were close and friendly; they both represented the same institution—the crown—and were amenable for their acts to the same power. Burrington's relations with the council were very unpleasant, chiefly for personal reasons; and Martin during the last few months of his administration could not act in harmony with this body, chiefly because the councillors were taking the side of the people in their extreme demands, while Martin was exalting prerogative government.

The council was provided for in the commissions and instructions from the crown to the governor. The first list of councillors was as a rule named in the instructions to the governor. When a vacancy occurred, the king, with the co-operation of the board of trade, filled it by giving a commission to the one they approved out af the number recommended by the governor. The commissions and instructions to the governor specified the powers and privileges of the council. The councillors, therefore, did not receive their powers from the people of the province and hence were not much inclined to enter into their feelings. They were largely under the control of the governor. He might suspend any of them for misconduct or failure to discharge their duties, but the reasons for so doing must always be sent to the board of trade and king, who had a final decision. This provision placed them, as well as the governor, under the ultimate control of the authorities in England. Burrington's instructions stated that, if any councillor residing in the province should wilfully absent himself from the council when duly summoned, and without lawful cause should persist therein after being admonished, the governor might suspend

him until the king's pleasure was known.[1] The instructions to the later governors contained substantially the same provisions. Several suspensions were made by the governor, and some of those suspended by him were restored by the crown. The governor could also fill vacancies, if the number of councillors fell below seven, but this was done subject to the royal will.

The council acted as an adjunct to the governor and was therefore an executive body. When the governor died or was absent from the province, the president of the council acted as the chief executive for the time. This was done in the case of Rice, Rowan and Hassell. The same body also constituted the upper house of the legislature. As the upper house the council held its sessions at the same time with the lower house. Sometimes it was in session as a semi-legislative body when the lower house was not in session, and as such it and the governor passed certain necessary ordinances.

The council as an executive body had a very considerable share in the administration of the land system. The governor was ordered to exercise his territorial powers by their advice and consent;[2] and in this he rarely disobeyed his instructions. They, with the chief executive, issued the warrants and grants,[3] decided upon the question whether lands should be granted to certain persons and whether lands were escheated or forfeited. It was their duty also to see that the quit-rents were properly collected. They heard many complaints about the legality of grants, decided whether quit-rents were payable in proclamation money or in certain products, and what should be the value of such products, summoned persons before them to show why they held or laid claim to lands, heard petitions for regrants, erected a court of exchequer for adjusting all cases relating to the crown's revenue from lands, appointed assistant barons to the said court, ordered that the governor sit in the council at times to hear and determine all claims pertaining to land, decided upon the time when the surveyor-general should make his returns, and urged the receiver-general to secure a proper rent-roll.[4]

The council shared largely in the general administration of the prov-

1 C. R. III, 93.
2 C. R. III, 101.
3 MS. Warrants and Grants.
4 C. R. III, 219, 276, 401, 424-26; IV, 36-38, 40, 43, 44, 53, 71; V, 489, 656; VI, 1073-76; VIII, 160-64, 192; MS. Warrants and Grants.

ince. In this, as in all their other functions, they were allowed freedom of speech and vote. The governor could not act without the advice and consent of at least five councillors, unless upon very urgent business, when he might advise with only three.[1] In this capacity as a general administrative body the council had a large variety of duties. They ordered letters patent to be issued to the chief justice, secretary and other patent officers whom the crown had appointed, which instructed them to begin their duties in the province, and ordered commissions of the peace to be issued appointing certain persons justices of the peace. They appointed administrators of certain private estates and sat in judgment over the administration,[2] heard complaints against the officers of the province and at times advised the governor to suspend them from their office, even that of the council, recommended to the governor persons fit to fill the vacancies pending the royal pleasure, heard and granted petitions for new precincts, summoned precinct treasurers to appear before them and exhibit their accounts, ordered sheriffs to complete the collection of taxes by certain times, considered all questions pertaining to the affairs of the Indians located within or on the borders of the province, heard and advised the governor to grant petitions for reprieve to certain persons under heavy sentences, and finally could appoint a committee to act jointly with a committee from the lower house in examining and auditing all public claims and accounts.[3] While in many of these matters the council merely advised, still the governor rarely acted contrary to their advice. Very frequently matters were left entirely to a majority of the councillors and the governor acted in strict accordance with their decision.

The council had some judicial powers and duties, though these were mainly of the nature of advice. They advised commissions to be issued appointing assistant justices of the general court, and that courts of oyer and terminer be held at certain times and places. They, with the governor, issued commissions of the peace, appointing themselves, the secretary, attorney-general, assistant justices and the chairmen of the precincts—all justices of the peace. The governor in the council, with at least four mem-

1 C. R. III, 91.

2 C. R. III, 214-15, 217, 224, 234.

3 C. R. III, 405-10, 412, 414, 417, 421, 425; IV, 2, 33, 233-34, 461-62; V, 828, 1017; VI, 330-31, 758, 773, 1009.

bers, could act as a court of chancery, to hear and decide all cases in equity.[1]

The council was a legislative as well as an executive body, and no act could be passed unless it gave its assent. As the upper house it kept its own journals, and these give abundant evidence that this body bore a very important part in the law-making of the province. In practically all matters they had equal rights, powers and privileges with the lower house; in some points they had greater powers. The upper house alone could reject the bills or order them engrossed by the lower house; and all bills must pass both houses, through three readings, and receive a majority vote in each before they could go to the governor. Either house could make amendments to the other's bills. Frequent conferences of the two houses were held over the amendments; sometimes they came to an agreement, but very often did not. When no agreement could be reached, the upper house at once rejected the bill for which the amendments had been proposed. This right of rejecting all bills to which they could not assent was very frequently exercised by the upper house, and gave it great powers. The council in a semi-legislative capacity at times advised the governor to assent to or reject bills which had passed both houses.[2] In its executive capacity it advised the governor to prorogue, dissolve, or call the assembly, and such advice was as a rule acted upon by the governor.[3] The council had, therefore, a two-fold law-making function, one as an executive and the other as a purely legislative body. When they were determined to do so, they could block or hinder any legislation, in spite of the demands of the governor and the lower house. As a rule, however, they were in sympathy with the position of the chief executive in his attempts to secure the passage of certain acts. They, like the governor, were agents of the crown, and in exercising their law-making powers they for the most part entertained ideas similar to his.

It is difficult to estimate exactly how efficient the council as an executive body was. The records seem to point to the conclusion that upon the whole this body was not very efficient, though its policy was to support the home government. Under Burrington it did little but dispute over personal or constitutional matters. Under Johnston, Dobbs and Tryon, there

1 C. R. III, 251, 204, 425, 428; VI, 1009, 1017; VII, 5; VIII, 269-70.
2 C. R. III-IX, passim.
3 C. R. III, 415, 536; IV. 461; V, 34; VII, 752; VIII, 37, 150.

was practical agreement between it and the governor, though not the greatest possible efficiency. Martin's relations with this department of the government were not very pleasant and harmonious. By 1772 the councillors had begun to see the drift of affairs in the American colonies, that all were tending to oppose the English administration, and they took sides with the people in several of their demands.[1] While the full number was twelve, still only a very few times did all of them ever meet in one council. They lived in different parts of the province, had many personal interests to look after, received little or no allowance.[2] It was therefore most natural that they should not take a very great or profound interest in the government of the province. This part of the executive was less efficient than the governor; the councillors were colonists. They did not feel themselves to be under strict responsibility to the crown; they might be suepended for neglect, but this penalty was of little consequence to them. The governor on the other hand was the special agent of the crown and was directly responsible to it. He was a citizen of Great Britain, not a colonist. It was his duty to govern the province in the best possible way, and removal from office meant far more to him than it did to a councillor.

The governor was instructed to act with no less than five members, unless in cases of great emergency, when he might allow three to constitute a quorum for business.[3] As the records indicate, a good many meetings were held in which only three were present, and the governor by force of circumstances was compelled to act with these. In November, 1741, a council met in which nine out of the twelve were present,[4] but this was the largest meeting between 1731 and 1742. At the meetings between 1754 and 1775 seven councillors were frequently present. Whether the number was large or small, many of the meetings in an executive capacity were wholly of a routine nature, and much business of this kind was disposed of without much attention or care. When acting in a legislative capacity the council as a rule showed much more vigor and intelligence, and the number at the meetings of this nature was larger than at the executive sessions. It was in service of this kind that the council contributed the most to the interest and welfare of the royal government.

1 C. R. III-IX, passim.
2 C. R. III-IX, passim.
3 C. R. III, 91-93.
4 C. R. IV, 587.

Concerning their general relations with the governor much can be said both to their credit and discredit. Under Burrington the executive council could not act in harmony with the governor. The meetings were frequently small and were made up chiefly of those councillors who held other offices—that of chief justice or secretary. These officers were selfish and looked after interests of their own and consequently came easily into conflict with the governor. Burrington, in a report to Secretary Newcastle, July 2, 1731, stated that he had had a great debate with three of the council—Smith, Ashe, Edmund Porter—over the powers of the assistant justices; that he had claimed that the assistant justices had some judicial powers independent of the chief, but that Chief Justice Smith and his two allies mentioned above claimed that the assistant justices were only the mere supporters of the chief.[1] With this report he sent papers, dated May 22, in which he claimed that the three councillors named above would not attend the meetings though duly summoned, because they did not agree with his opinion in regard to the powers of the assistant justices.[2] On September 4 he wrote to the board of trade that some of the councillors offered more obstruction to his administration than did the lower house. He stated that when he had called a council to nominate a chief justise in the place of Smith, who had left the province, only Jenoure and Porter appeared, and that the other councillors were either out of the province or at Cape Fear, two hundred miles away. He further said that he then asked the two present about appointing others, so that there might be a sufficient number to hold a chancery court; that Jenoure readily assented to it, but that Porter denied his right of so doing;[3] that he was compelled by the circumstances to swear in for the time two others in order to appoint a chief justice and hold a court of chancery.[4] His opponents in the council denied that they had hindered the cause of good government by their demands and conduct, and declared that Burrington by his arbitrary and illegal acts had done so.[5] The evidence when analyzed shows that, while Burrington was arbitrary and uncompromising, he was not to a great extent illegal or unconstitutional in his position, and that

1 C. R. III, 150, 233, 236-38.
2 C. R. III, 168-75.
3 C. R. III, 196-97.
4 C. R. III, 207-210.
5 C. R. III, 386-68.

the councillors were certainly as much responsible as the governor for their failure to serve the crown.[1]

Under Johnston, both as an executive and a legislative body, the council acted in substantial agreement with the governor and among themselves. At several times during his administration they assured him that they would do all in their power in accord with his wishes and the crown's interests. But still this department of the government was by no means very efficient under him. He, in writing to the board of trade in 1740, stated that there were four vacancies in the council, and that two of them were due to the fact that two of those appointed by the crown in 1730 had never come to the province.[2] In 1752 the board of trade made an investigation concerning the council and found that there were then only three persons in it whom the crown had appointed.[3] This is one piece of evidence, out of very much, that the authorities in England paid little attention to the composition and efficiency of this body.

The relations of the council with Dobbs were pleasant, but their efficiency under him was certainly not of a high grade. He informed the authorities in England that some of the councillors never attended a meeting unless it was held at or near their own homes[4], and also that at times he could not hold an assembly because of a lack of a sufficient number of the council to constitute the upper house.[5] It was during his administration that an attempt was made by the home government to pay the councillors for their expenses while sitting in an executive or judicial capacity, but this attempt was apparently never successful, even under the later governors.[6] To avoid some abuses which had occurred rather frequently, Dobbs, in 1761, laid before the council one of his instructions from the crown, which forbade the governor to allow the councillors as a legislative body any protection other than of their persons, and that only during the session, and also prohibited their adjournment otherwise than *de die in diem* excepting on Sundays and holidays.[7]

The relations between Tryon and the council were harmonious to a great

1 C. R. III, 370-82, 429-38, 559. 625-27.
2 C. R. IV, 81, 82, 114, 231, 425.
3 C. R. IV, 1315.
4 C. R. V, 439-41.
5 C. R. VI, 243-44.
6 C. R. V, 788; VI, 718-20; IX, 375.
7 C. R. VI, 655-56.

degree.[1] In writing to secretary Hillsborough, in 1769, he stated that the councillors had acted well and uniformly for the king's interest.[2] Martin and the council agreed upon most matters from 1771 to 1772, but after 1772 the council was disposed to side with the people as apposed to the royal prerogative which he was attempting to compel the colonists to accept and abide by. On April 6, 1774, he wrote to Secretary Dartmouth that the conduct of the council at the last session of the legislature was opposed to his adminittration, that it was unbecoming and tended to injure the interests of the crown.[3] He and the councillors had some difference of opinion on the bill for superior courts. The governor thought the bill was contrary to his instructions and encroached on the king's rights, but five of the council advised him to ratify it as the best possible measure.[4] On May 4, 1775, he again wrote to Dartmouth that the conduct of the council had been very bad and disobedient.[5] In both instances he was speaking of the council as the upper house. He made no complaints of the council as an executive body, and one may conclude therefore that they discharged their routine executive duties in a fairly satisfactory manner.

The personal composition of the council was a matter in which the home authorities and governor were supposed to be much interested. To have an efficient council it was necessary to appoint the ablest and best men among the colonists as councillors. In this the governor had a large share. It was his duty to keep a list of the best men and of their qualifications before the crown and board of trade, from which they should choose in case of a vacancy. Upon the whole the governor showed intelligence in discharging his duty; a good many of his recommendations and nominations were wise and expedient. The crown and board of trade, in making the final choice, were in the main influenced by what the governor had to say, though frequently they did not heed his recommendations.

Among those who served the crown and province as councillors, and who are worthy of mention, were William Smith, Nathaniel Rice, John Baptiste Ashe, Eliezer Allen, Matthew Rowan, Cornelius Harnett, Roger Moore, Edward Moseley, Cullen Pollock, James Murray, William Forbes, James Hassell, James Innes, John Rutherford, John Swann,

1 C. R. VII, 45-46, 554-55, 894; VIII, 100, 153, 290.
2 C. R. VIII, 152-53.
3 C. R. IX, 969-75.
4 C. R. IX, 975-80.
5 C. R. IX, 1242-45.

James Craven, Lewis DeRossett, Richard Spaight, H. E. McCulloh, Alexander McCulloh, Charles Berry, B. Heron, Marmaduke Jones and Thomas McGuire.[1] These were men of influence and ability. They lived in different parts of the province and knew the conditions of their several localities. They understood the position of the crown, as they were its agents, and likewise the standpoint of the colonists among whom they lived.

The council, though it was not a very efficient body in its executive capacity, still contributed much to the good government of the province. It was in the main a body composed of men of ability, intelligence and honesty. It exercised a beneficent restraint upon the lower house of the legislature, prevented the governor from making many mistakes, and brought respect and dignity to the royal government.

1 C. R. III, 91, 209; IV, 1, 3, 31, 445, 1315; V, 817; VI, 559; VII, 137; IX, 52, 1207; State Records, I, 126, 146-47.

CHAPTER III.

THE LOWER HOUSE OF THE LEGISLATURE.

The position of the executive—the governor and the council—has already been considered, their powers, duties and acts discussed. The functions of the council as the upper house of the legislature have likewise been discussed. It now remains to consider the other branch of the legislature—the lower house. This, like the governor and the council, was in existence when North Carolina became a royal province. It was provided for in the charters of 1663 and 1665, which the crown gave to the proprietors, and they by their instructions to their governors gave orders as to its qualifications and workings. When the province became royal the lower house was provided for in the commissions and instructions from the crown to the royal governors. The crown was now the direct and immediate source of the provincial laws, but it like the proprietors delegated many of the law-making powers to the general assembly, of which the lower house was a part.

The organization and privileges of this body were defined, to a large extent, by the instructions to the governor; many of their privileges came at the will of the crown and therefore did not belong to them inherently or from proprietary grants, as they were at times disposed to claim. However, the fact that this body had been in legal and actual existence for more than fifty years entitled it to some privileges independent of the crown. The crown gave them few privileges of a positive nature, most of the instructions pertaining to the lower house being of the nature of prohibitions. The governor was ordered to see that the members of this branch of the legislature were chosen by the freeholders only. He was forbidden to allow them any protection other than of their persons during the session, or to allow them to adjourn without his leave otherwise than *de die in diem*, except on Sundays and holidays. He was instructed to see that the council had like powers with the lower house in framing money bills, and that all enacting clauses should be in the name of the governor, council and lower house. He could not allow the assembly any rights or privi-

leges which custom had not permitted to the house of commons in England.[1]

He was also instructed not to allow any act or ordinance for levying money, imposing fines and penalties, unless with a clause which expressly stated that they were for the crown and the benefit of the province. He should permit no act by which the royal revenue might be lessened or impaired without royal permission. He was ordered not to allow any clause in any money bill, whereby the same should not be liable to be accounted for to the crown and its fiscal officers; to allow no act imposing a tax on wine and other liquors for a shorter time than one whole year; to see that all laws for the support of the government were for an unlimited time, excepting those for purely temporary purposes; not to assent to any acts of an extraordinary nature, whereby the royal prerogative, the property of English subjects and the trade of Great Britain, might be affected until he had transmitted draughts of the same to the crown and received the royal approval, unless the said acts contained clauses suspending their execution until the king's pleasure was known; nor could he assent to laws for a shorter time than two years, except those imposing taxes on wines and liquors. He was not permitted to reenact any laws which had been disallowed by the crown unless with its special leave, nor should he assent to any act which repealed any law then in force unless it contained a clause suspending its execution until the king's will was known. He was also ordered not to assent to any private act whereby the property of any person would be effected, in which there was no clause saving the rights of the crown, those of all bodies politic and corporate, and of all other persons not mentioned in the act.[2]

The lower house during the whole of the royal period claimed that it had some rights, inherent in its own nature and derived from the proprietors, which the crown must allow. By an act of 1715-1716 the lower house had ordered that assemblies should be held biennially in spite of what the proprietors desired. This act also regulated the elections, the qualifications of the voters and of the representatives. Whether the proprietors accepted this act or not is of little importance in this connection. The colonists exercised the rights and claimed the privileges of it from 1716 to 1731.

1 C. R. III, 93-94.

2 C. R. III, 93-96, 496-98; V, 1108-44; VII, 137-42; VIII, 512-16.

Burrington in 1731 advised the crown to repeal it for the reason that it was contrary to the principles laid down in his instructions from the crown; and it was repealed by the crown, though at what time is not known. The fact that Burrington was ordered by the king to hold the election according to the principles of the royal instructions is evidence that the crown meant that the act of 1715-1716 was no longer binding. Still an act was passed by the assembly, assented to by Johnston and allowed by the crown in 1734, repealing a clause in the said act of 1715-1716, and in 1743 an act was passed and agreed to which repealed the act of 1734. These two acts of 1734 and 1743 are good evidence that the lower house under the crown did exercise some rights in regulating their privileges, as the act of 1743 regulated the elections of the members of the lower house and defined the qualifications of the members and of the electors. This act was in operation in 1752. In 1760 another act was assented to by the chief executive and allowed by the crown to substantially the same effect, and this was in operation in 1765.[1]

One of the privileges which the lower house claimed was that of determining the suffrage. As to what this was during the whole royal period we can not say with great accuracy. The royal government began with the principle of freehold suffrage, and this appears to have been the case during the larger part, if not all, of the period.[2] The records would indicate that the assembly, while it passed certain acts defining the qualifications of voters, did so according to the instructions from the crown which insisted upon freehold suffrage. To be a freeholder in North Carolina was not very difficult, and consequently suffrage was not greatly limited. The lower house also claimed the privilege of making inquiries into the election returns of its own members.[3] At an assembly in July 1733 several representatives appeared from the new precincts of Onslow, Bladen and Edgecombe, but the lower house refused to admit them until they had made an investigation as to whether these precincts had the legal right to send representatives. A conference was held between the two houses on this matter, and it was agreed that the precincts could send members to the next session of the assembly.[4] The lower house declared that

1 Revisal, 1752, 79; Revisal, 1765, II, 198-201; C. R. III, 180-81.
2 C. R. III, 93,497; V. 1110-11; VII, 1337-78; VIII, 532.
3 C. R. III, 288-89.
4 C. R. III, 581-83.

the governor and council alone did not have the right of erecting new precincts, that they must be erected by the consent of the lower house as well. On this ground they had refused to admit the representatives from the above named precincts, which had been erected by the governor and council without the consent of the lower house.[1]

The question of the number of representatives from each precinct or county was of great importance and at times brought on much discussion. The first lower house under Burrington had representatives as follows: five each from Chowan, Perquimans, Pasquotank, Bertie; four from Currituck; two each from Beaufort, Hyde, Craven, Carteret; one each from the towns of Edenton, Newbern, Bath.[2] There was never any discussion about the right of each town, which had a certain population, to send one delegate to the assembly. But there was a long struggle between the young counties, which could send only two, and the older counties, which had the right to have five representatives. The older counties were in the Albemarle or north-eastern section. The people of this section were in much better circumstances that those in the southern or western counties; they had different social, economic and political ideas. To give the counties of the northeast five representatives each, while all the other counties had only two each, gave the control in matters of legislation to the more wealthy and aristocratic class. From one point of view this was an injustice, but it must be remembered that the older counties had a larger population and many more vested interests than the new counties. Johnston, urged on by what he thought to be a great injustice and by the fact that he could not control the representatives from Albemarle as easily as he desired, made several attempts to do away with this unequal representation in the lower house. His earlier attempts failed because of the control which the large representation gave to the older counties. He desired to bring about a system of equal representation from each county, whether old or new, large or small. But this was impossible in an assembly in which the Albemarle counties had a large majority. He, being convinced that the only way to accomplish his end was by moving the provincial capital to the extreme southern part of the province, called an assembly to meet in the town of Wilmington in 1746. To this assembly the representatives of the

1 C. R. III, 575-76.
2 C. R. III, 285.

northeastern counties would not go, as Wilmington was more than two hundred miles away and almost a wilderness separated it from Albemarle. By this assembly, which really represented only the southern and south-western counties, an act was passed which provided for two representatives from each county and one from each town. This act also provided that eight members could adjourn *de die in diem* until as many as fourteen and the speaker, who could constitute a quorum, arrived. This provision was necessary to carry out the idea of equal representation.[1] The act of 1746 was in operation until 1754, when the crown repealed it.[2] From 1746 to 1754 the counties of the north-east had no representation in the lower house, as they would not send any delegation smaller than their customary number—five. From 1754 to 1775 the representation was unequal as it had been previous to 1746.[3]

Dobbs was instructed in 1754 to erect towns and counties in the southern and western part of the province whenever he and the council deemed it fit. He was to do this, not by an act of the assembly, but by charters of incorporation which gave the said towns and counties the privilege of sending representatives to the lower house.[4] This right of the governor was denied by many of the colonists, and it appears that Dobbs was not able to carry out fully his intentions concerning this for sometime after his administration began. In March 1759 it was ordered by the council that the governor issue a proclamation to the effect that, upon the dissolution of the assembly then elected, no writs of election could be issued to several counties and towns unless they took out charters of incorporation from the governor.[5] This would indicate that several towns and counties had been sending representatives without receiving the right to do so from the governor. Still Dobbs had exercised his right of granting charters of incorportion in 1757,[6] and this was done again in 1771.[7]

The lower house was elected according to writs from the governor, and the members must take from him the oaths of allegiance and supremacy to the crown.[8] He prorogued and dissolved it whenever he and the council

1 Revisal, 1752, 223-24.
2 C. R. V, 1110-11.
3 C. R. V, 231-32; VI-IX, passim.
4 C. R. V, 1111.
5 C. R. VI, 77.
6 C. R. V, 767-68.
7 C. R. VIII, 251, 543.
8 C. R. III, 66-73.

saw fit, and this was done very frequently. In his opening speeches at the beginning of each session he outlined his policy to them, spoke of their rights and duties, and made his requests. He allowed them to choose their own speaker and clerk, to keep their journals, to originate, discuss and amend bills, but the final rejection of a bill was in the power of the council and himself. By virtue of the fact that the lower house had control of the supplies, they compelled the governor not infrequently to assent to their demands, and in so doing they exercised a very considerable influence over him and his administration. While he and the council could reject any bill which the lower house passed, still they could never pass any act unless the lower house gave their assent. This gave them the power of forcing the governor and council to allow them to have and to exercise a good many general and special privileges, to which they were not entitled by written law.

Such were the privileges of the lower house. It also had certain specified powers, some of which the crown gave by voluntary grant, while others were in fact usurped by the lower house. Along with the powers were their correlative duties. The lower house had and exercised considerable powers in regulating the land system, especially in excusing the colonists from the penalties of non-compliance with the regulations. The governor and council had control of the greater part of the administration of the land system, but the lower house had at least its share in the passing of the land laws, which the chief executive was instructed to secure. During the royal period seventeen acts concerning land were passed by the assembly and agreed to by the governor and crown. These acts were concerning the proper settlement and cultivation, enrolling and registering, titles, rent-rolls and quit-rents, and the relief of those who failed to comply with the laws and regulations.[1] The crown gave directions to the governor in regard to some of the general regulations of the land system, but it was left to the governor and assembly to work out all the details in the administration of the system. A careful analysis of these details as shown in the land laws, furnishes much evidence that the lower house had more than their constitutional share. Not only did they take a leading part in passing the land acts, but they also made many complaints to the governor about the granting of lands at high rents, about the inconvenience of the

1 Revisal, 1752, 85, 90, 138, 155, 275, 285, 329; Revisal, 1765, II, 35, 70, 82, 211, 331: Revisal, 1773, 344, 464, 491, 560, 562.

places where rents were paid and about the dishonesty of the collectors. In fact they exercised a general supervision over the administration of the whole system,[1] a right which the crown had reserved for the governor and the council. They went so far as to maintain that all lands should be granted to the colonists at the very low rates as specified in the grant of 1668, which the lower house called the "original deed."[2]

With the general administration of the province the lower house had much to do. It acted jointly with the upper house in inspecting and settling all public claims and accounts. It ordered the public treasurers to lay all their accounts before it and often appointed and controlled them, attempted to ascertain and regulate the fees of all officers, in what they should be paid and at what rates, complained of the bad conduct of officers and of the lack of courts, made addresses to the governor and crown concerning the laws, currency, trade, lands, rents and tenants of the province, appointed and controlled for the most an agent who resided in England. The governor in his opening speeches encouraged much of this and asked them to promote the welfare of the province by establishing a good system of trade, religion and education.[3] This request of the governor gave them a legal right to act for and look after the general administration in several matters; other rights they assumed as belonging to them by virtue of the fact that they were the representatives of the people who were governed and paid the taxes. The chief among these rights were the appointment and control of the treasurers. The governor was much apposed to this claim and declared that the lower house in making it was assuming to regulate the executive and was therefore taking away from his constitutional rights.[4] In spite of the protest on the part of the executive the lower house did in the main appoint and control the treasurers.

The lower house had its share in passing the acts for the militia and defence. In the eight militia acts passed by the assembly and allowed by the crown the interests of the people were considered as much if not more than those of the crown. The governor urged that some of them be passed and suggested changes in others, and the acts also show the influence of the lower house. The general form of these laws was in conformity with the Eng-

1 C. R. III-IX. passim.
2 C. R. III, 289-93.
3 C. R. III, 269, 277, 291, 294, 542; IV-IX, passim.
4 C. R. VI, 1253.

lish models, but in the details there was much that was distinctly provincial and of the North Carolina type.[1] It was the lower house especially to which the governor applied for soldiers, arms, supplies and forts, either for defensive or offensive war. This was done in 1740, and the lower house readily granted Johnston a considerable number of soldiers and all the supplies required for them, though these were to aid England in carrying on an offensive war against the Spanish West Indies.[2] From 1754 to 1762 the governor had to make many requests for troops and money to defend the province and to aid its neighbors, and as a rule the assembly complied with his requests. The assembly had granted a considerable number of soldiers and about 80,000 pounds to the common cause of the colonies by 1760,[3] and continued to grant aid, though not large, until the war was ended and all danger was removed.[4] The lower house also took a prominent part in suppressing the insurrection of the Regulators in 1768-1771.[5] While the governor was given full military powers and could therefore theoretically exercise them without consulting the legislature, still he could do nothing in reality without the sympathy and aid of this department of the government. He must have soldiers and money, and in order to secure these he had to give up many of his powers to the lower house which alone could really grant them. So that the lower house, while in theory it had few military powers, had and exercised great influence over military affairs.

In judicial matters this body exercised considerable powers. It made resolves about the proper or improper way of administering justice; with the upper house it decided on jurymen for the counties; it might and did request the governor to pardon those guilty of violating the laws of the province. It had its part in passing the acts which erected courts. In most of the court bills the lower house attempted to insert clauses dealing with the qualifications and the time of service of the judges, the amount and extent of the jurisdiction of the different courts, and foreign attachments, all of which clauses were considered by the crown as assumptions on the part of the lower house contrary to English custom and law.[6] These claims the executive for the most part refused, inasmuch as they were

1 Revisals, passim.
2 C. R. IV, 550-55.
3 C. R. VI, 476-78.
4 C. R. VI, 803, 808-10, 831, 1090; VII, 552.
5 C. R. VII, 926-27; VII, 333, 385.
6 C. R. III, 587-90, 603-40; IV, 515-25, 488; VI, 802-04; IX, 169, 173.

contrary to the principles of his instructions, and the crown stood by its governor in this refusal. Neither would the lower house give up their claims, and no compromise was ever reached.

And, lastly, the lower house had a large part in the passing of acts for the government of the province. In this, as in all the other powers, there were many limitations upon the lower house. The council was both an executive and legislative body. The lower house was a legislative rather than an administration body; it never met except in a legislative capacity. It was in this legislative capacity that the lower house exercised the powers spoken of above. The fact that the governor and council had the power to call for a new election, adjourn, prorogue and dissolve the lower house, is evidence of how subordinate was the theoretical position of this house in law-making. But when once called they had about one third of the law-making powers within their control. All bills had to be passed through three readings and receive a majority vote in each house before the governor could assent to them. The upper house always had the right to order a bill engrossed by the lower house, or to reject any bill to which they could not asssent. The governor had full power of assenting to or rejecting the bills passed by both houses, and also of prorogueing or dissolving the assembly when he thought they were going too far in their discussions and claims.[1]

In reality, however, the lower house had far more than its theoretical powers. The governor and the upper house frequently were compelled by circumstances to allow them certain powers and the passage of certain acts, which were really contrary to English customs and the governor's instructions, in order to secure any bill at all for the government or any money for the expenses thereof in time of peace or war. A careful study of the laws passed during the royal period and of the method of their passage reveals the great power which the lower house at many times had. In many different ways they compelled the upper house and the governor to assent to their bills, though against royal instructions. They represented the people who paid the money and fought the battles of the royal government of the province, and as such had very great powers.[2]

Concerning the efficiency of the lower house during the whole period of

1 C. R. III-IX, Passim; Revisals, passim.
2 C. R. III-IX, Passim; Revisals, Passim.

royal government few accurate statements can be made. Under Burrington no bills became laws. Who was to blame it is difficult to say with exactness. The evidence as far as it exists shows that both the governor and the lower house were extreme and uncompromising in their demands.[1] For the most part the lower house was obedient to the requests of Johnston, and many bills were agreed to by him.[2] With Dobbs they were on good terms until 1760, when his continued, though necessary, requests for soldiers and money caused them to find fault with his administration and to refuse his requests.[3] Tryon by his diplomatic ways had no difficulty with them and secured their sympathy and aid in almost all of his undertakings.[4] Martin had to meet them at a very critical time. The fiscal and judicial problems had by his time become very grave. He was a prerogative governor and they a democratic house. The natural consequences were that they could not agree.[5]

The acts of the legislature and the part which the lower house took in their passage give very abundant evidence of the honesty and sincerity of the representatives of the people. They took extreme positions at times, as against the governor and council; they made claims to privileges and rights to which they were not constitutionally entitled. But with it all they did many things for the support and welfare of the crown government in the province, and were loyal subjects of the king. They watched the interests of the colonists and defended them against what they deemed to be encroachments on the part of the crown officials, and this they had the inherent right to do. The lower house had among its members several men of fine intelligence and ability. While as a whole body it was not so distinguished for ability as the council, still in devotion to what they believed to be their duty they were excelled by none.

1 C. R. III, 257-325, 541, 541, 549-52, 636-38.

2 C. R. IV, 77-79, 83-85, 243, 380-414, 418, 549-51, 771-72, 777-78, 834-38, 863-67.

3 C. R. V, 309-10, 558-59, 734-36, 924, 1010-11; VI, 99, 138-40, 369-72, 425, 467-69, 511, 695, 811 835-37, 1024, 1036, 1253.

4 C. R. VII, 43, 60-61, 63-64, 291-92, 347-49, 355-56, 421, 423, 550, 552, 569-70, 624, 668-70; VIII, 284 86, 311-13, 383-84, 477-79, 492-94, 104-05, 140-41.

5 C. R. IX, 101, 221-22, 346, 373-74, 442-45, 583-87, 476-77, 707-09, 737-43, 787-88, 790-91, 874-76, 879-80, 927-28, 945-46, 955, 1188-95, 1205.

CHAPTER IV.

THE CONFLICTS BETWEEN THE EXECUTIVE AND THE LOWER HOUSE.

The functions and relations of the governor, council and lower house have already been considered. The executive—the governor and the council—,directly representing the crown was very naturally disposed to look to the interests of the crown, even to the disadvantage of the colonists. It was its special duty to administer the affairs of the province in a manner that would bring the best possible results to the crown; and a model government of an English royal province in the eighteenth century was one which aimed to add much to the material advantage of the government and people of England. The lower house of the legislature represented the colonists who were likewise working for their own interests. These rural and independent people could never fully understand or appreciate the significance and and benefits of the crown government. In theory they were protected by the king; in reality they protected themselves to a large extent. While the colonists never fully understood the policy of the home government, it is equally true that the people and officials in England knew very little about the ideas and sentiments of the farmers of North Carolina. Under these conditions, and with the organization and powers which the executive and lower house had, it was natural that they should come into conflicts of a fundamental and serious nature.

There were some disputes between these departments on detailed, trivial or personal matters, and some of these hindered the cause of good government. But the larger number of the conflicts were on constitutional and vital points. It was on questions of land and quit-rents, fees, money and the treasurers, the agent, courts and judges, that these conflicts became important and serious. In this connection the more formal or constitutional aspects of the conflicts and disputes upon questions of land, money and justice will be considered; elsewhere the details of these systems will be given and discussed. The following discussion will be made for the specific purpose of showing what the positions of the executive and the lower house were upon the most vital questions of government, with the

conviction that when these positions are clearly comprehended the most difficult problem in the history of North Carolina as a royal province is practically solved.

The conflicts arising from the different points of view concerning the administration of the land system came into prominence early in 1731, and Burrington and the lower house could never come to an agreement upon them. In April, 1731, the house, after considering the instructions from the crown concerning the payment of quit-rents, adopted a resolution to the effect that there was not coin enough in the province to pay one half of the rents and that such payment should be made in valuable commodities or bills, at a proper rate of exchange. The governor insisted that the payment should be made in coin or in bills at a very low rate of exchange, and that payment in commodities and bills at the rate which the house had assigned was to the great disadvantage of the crown. The house valued its commodities at high rates and demanded that the provincial bills be accepted at a small discount. During May of the same year a conference was held between the two parties in the dispute, but neither one yielding it accomcomplished nothing. Both Burrington and the house gave evidences of much bad feeling and no agreement could be reached.[1]

During the assembly of 1733 these questions became the subject of a more bitter dispute than had occurred in Burrington's first legislature. The lower house still demanded that quit-rents should be paid in commodities at high rates and in bills at a small discount. Burrington maintained that the rents were due in sterling and that the claims of the house were mere assumptions. The tone of his speeches to them, as well as his demands, was such as to cause them to continue the struggle. The house in defending their position finally made the claim that the deed of 1668 from the proprietors, known as the "original deed," was a permanent and binding document, and that the crown had no right to give instructions concerning quit-rents contrary to this deed.[2] This claim, which practically denied the crown's right of regulating the land system, had no legal or constitutional basis, and it was, as Burrington characterized it, a mere assumption. During the proprietary period the colonists had enjoyed certain privileges concerning their lands, and these were and ought to have been respected by the crown. But to deny the crown the right to modify them in the

1 C. R. III, 143-44, 157-68, 279-80, 294.
2 C. R. III, 598-99, 606-09, 621.

slightest degree was the assumption by the house of absolute independence. In their demands about the payment of quit-rents in commodities at high rates and in bills at a small discount they were ignoring the just rights of the crown and were depriving it of some of its legitimate dues, and the governor in refusing to assent to such demands was doing his duty. But he on the other hand was going to extremes in claiming that quit-rents should be paid in sterling only. The colonists had very little coin, and to demand rents in sterling only was a hardship to them and a mistake.

Johnston, as well as his predecessor, had some conflicts with the lower house on questions relating to land, but these never become so serious as to prevent any legislation whatever on the subject. Under him seven land acts were passed, but two of these were disallowed by the crown because of clauses which were derogatory to the interests of the home government.[1] This would indicate that Johnston was more compromising than Burrington, and affords a partial explanation of the fact that his conflicts with the house were not so serious as those under Burrington. While not so serious as under Burrington, still the disputes of Johnston with the house came from the same causes. Early in 1735 the lower house in replying to him stated that when the province was granted by the crown to the proprietors they were given the power by the charters to grant lands to all inhabitants at such rents as they could agree upon; that the proprietors through their governors, the council and the lower house were to make all the laws concerning land, which should be binding on the proprietors and their tenants; that by the "grand deed" of 1668 the proprietors gave to their governor and council the power of granting lands in North Carolina upon the same terms as lands were granted in Virginia, at two shillings per one hundred acrees payable in tobacco at one penny per pound; that when it was discovered that North Carolina could not produce as good tobacco as Virginia the payment was changed from tobacco to other commodities at certain rates, at which rates the commodities had always been received by the proprietors; and that for these reasons it was proper to claim that the "original deed" was still in force, though all the other proprietary laws had become void. They also declared that the governor's demand that quit-rents be paid in sterling was contrary to their deed from the proprietors, and therefore illegal. They therefore asked the governor

1 Revisal, 1752, passim.

to have the rents collected according to the customs of the province until a law could be secured to that effect.[1]

On the same day Johnston sent the lower house a message, in which he declared that their ideas on quit-rents were contrary to the king's rights and privileges. He argued that the "grand deed" from the proprietors contained nothing which made it irrevocable, and that it had actually been revoked by the proprietors in 1670, when they gave another deed, which required the payment of quit-rents in coin at one half penny per acre, and that the acts directing the payment in commodities had never received the assent of the proprietors and consequently had not become laws. He further stated that North Carolina had adopted the crown laws when it became a royal province.[2] His argument, though to a very great extent historically and legally sound, did not convince the members of the house, and no act was passed and agreed to at this assembly.[3]

The position which the lower house took under Burrington and Johnston in regard to matters of land was in many respects illegal and against the interests of the crown. It was their right and duty to see that the territorial administration was for the true welfare of the province, but there was no justification in their demanding that the interests of the crown should be ignored or harmed.

By the time that Dobbs became governor territorial questions had come to assume far less importance, hence they were no longer the subject of conflicts between the governor and the lower house. Military, judicial and fiscal problems were now the chief ones and upon these came the conflicts from and after 1754.

Not only did the governor and the lower house become involved in disputes over the land system, but the council and the lower house did likewise. From 1735 to 1740 bills relating to quit-rents were the causes of much dispute between the two houses. The lower house attempted to frame them so that their execution would impose as little a burden as possible upon the colonists, and at times almost ignored the rights of the crown. The upper house refused to agree to such action; they maintained, as far as they could, the rights and privileges of the king. During February 1735 the lower house sent a message to the upper house in regard to a

1 C. R. IV, 109-10.
2 C. R. IV, 110-14.
3 C. R. IV, 8.

bill for quit-rents. They stated that the upper house had amended their bill so as to restrict the payment of quit-rents to only four places. They claimed that this would be a heavy burden to the colonists, that rents were payable on the land unless expressly stated otherwise, and that such had been the custom in North Carolina, South Carolina and Virginia. The bill of the lower house proposed that rents be paid in the best possible commodities and at several places on the navigable rivers, no allowance being made for carriage.[1] The upper house replied that they were compelled to reject the bill because of the many clauses which were against the king's rights and interests. They said that the bill of the lower house would compel the king to spend one half of his quit-rents in collecting them, and that this was illegal.[2] No agreement was reached at this session. These questions were again much discussed and were the causes of conflicts in the assembly of October, 1736. At this session another bill for quit-rents was rejected by the upper house and for reasons similar to those mentioned above.[3] In February, 1739, after some dispute concerning the force of the "original deed," the payment in sterling and commodities and other detailed points, the two houses came to an agreement, each yielding on some points to the other.[4] After 1740 the records give no evidence of important conflicts between the two branches of the legislature on territorial questions. In those which occurred from 1735 to 1740 the upper house had taken substantially the same position as the governor in his conflicts with the lower house; the executive—the governor and the council—was therefore practically a unit in this.

The governor and the lower house, while acting much more harmoniously on the questions of fees than on land, still became involved in some conflicts concerning them. In April, 1731, Burrington sent a paper to the house in which he claimed that their charges, that fees were much higher in North Carolina that in Virginia, were unreasonable and false. This made the house angry and they in turn sent him a reply, in which they declared that for nearly twenty years, according to old customs and laws, officers had been paid in paper currency and at rates established by the lower house. They stated that officers under the crown were taking four times as much in fees

1 C. R. IV, 132-33.
2 C. R. IV, 133-35.
3 C. R. IV, 240.
4 C. R. IV, 368-69, 373.

as those under the proprietors had done, and in a bitter tone made many complaints about his whole administration. He then advanced the claim that he and the council alone had the full power to establish and regulate fees, and that the king's instructions, which stated that all fees should be paid in proclamation money, repealed all the proprietary laws concerning fees.[1] This claim on the part of the governor exaggerated his own powers and those of the council, and ignored some of the privileges of the lower house, privileges which they had enjoyed both by direct grants from the proprietors and by allowances on the part of the proprietors. The crown respected many of these privileges but time and again announced its right to modify them. It is evident that the king intended that the modifications should be made by the governor and council, with the consent of the house if possible. Burrington's claim, therefore, though much exaggerated, had a certain legal basis. The house would not accept his interpretation. They were to a large measure correct in declaring that they, as well as the governor and council, had a right to establish and regulate fees, but in their claim that their privileges from the proprietors could not be modified by the crown they were going too far. Such a claim denied the right of the crown to regulate public matters in its own province, which right the crown had by virtue of the fact that it was the chief executive and the ultimate source of governmental powers in the province.

Burrington asked for a compromise and proposed a conference. A conference was held, but with no results toward a compromise. The lower house would not yield to his demand that fees should be paid in proclamation money according to the king's instructions; they insisted upon tobacco and bills of credit being accepted, and upon the right of deciding at what rates these should be received. Burrington was perhaps too obstinate in demanding that fees be paid in proclamation money only. The house on the other hand gave little evidence of desiring to do the fair thing when they ordered that fees must be accepted in commodities at high rates and in bills at par, which were much depreciated.[2]

Under Johnston fees brought on no serious dispute. Still he and the lower house had different opinions concerning the amount of fees, in what they should be paid and who had the right of regulating them.[3] After

1 C. R. III, 95, 103, 265, 267, 270-72.
2 C. R. III, 144, 151-52, 280-81.
3 C. R. IV, 173-78, 189-200.

1736 there is practically no evidence of a conflict on these subjects, excepting once, in 1760. During May of that year the house complained of Dobbs taking too high fees, but this complaint was not founded on good evidence, as the records show, and was of no consequence.[1] From 1736 to 1774 the house at times made complaints about certain officers taking and demanding exorbitant or illegal fees but for the most part the governor was as ready as the house to correct such abuses; and during this period the evidence, both of a positive and negative nature, would indicate that the governor and the lower house were willing to compromise on fees, as they did on land questions. In fact other and far more important problems were then demanding the chief attention of both parties.

Fees were the subject of some conflict between the two houses of the legislature. During 1731 the lower house took into consideration the question of regulating fees, and especially in what they should be paid. They complained of the action on the part of the governor and the council in regulating them without the consent of the house. The council had taken the instructions from the crown, which declared that fees should be payable in proclamation money, as their guide, and they and the governor had acted accordingly. The house not only denounced their action, but went so far as to declare that such action, though upon the authority of royal instructions, was illegal and oppressive. The upper house, or council, was displeased at such a declaration on the part of the lower house, and sent them a resolution in which they stated that the house in making such a declaration was not only invading the crown's prerogative but was divesting the governor and council of their powers which the crown had given them. This caused the lower house to take a more conservative view. They now disavowed their statement concerning the illegality and oppression of the royal instructions. But they still made their own interpretations of the crown's instructions in regard to fees and declared that these were intended to mean that fees should be regulated by colonial acts, in the passage of which they should have as much part as the governor and upper house. No act concerning fees was passed by this assembly though serious attempts were made to this effect; neither house was willing to yield, at least upon the question as to the form in which fees should be payable. The lower house insisted upon the use of bills of credit which were much

1 C. R. VI. 288-89.

depreciated, while the upper house adhered to the instructions from the king which called for proclamation money.[1] The upper house was in this therefore in substantial sympathy and agreement with the governor.

The conflicts relating to fees did not arise from the institution itself, but had reference to the form of their payment and to the parties who should regulate them; they were therefore conflicts arising chiefly from the fiscal side of the system. Both parties—the executive and the lower house—in the main agreed that there should be a system of fees. They were willing to allow certain fees to the governor, the officers in chancery and admiralty, the secretary, chief justice, associate justices, attorney-general, marshalls, collectors of customs, registers, surveyors, escheators, constables, justices of the peace and clerks of the different courts. Fees constituted the chief or only compensation to these officers. On the question that they should be allowed the executive and the lower house were in agreement, but in regard to some of the details of the system they entertained different views.[2]

The disposition and control of public revenue were subjects of much controversy between the governor and the lower house during the larger part of the royal period. During April, 1731, the house in reply to the governor's speech discussed fiscal matters and declared that no public monies should be issued except by the governor, council and lower house. One of Burrington's instructions directed him to allow no money to be issued or disposed of except by his warrant issued upon the advice of the council, but he was to allow the lower house to review and examine the accounts. This instruction was intended to take the distribution of the public monies largely from the lower house and to allow them no further control than that which they might have from reviewing the accounts of the expenditures. They would not accept such an instruction, at least Burrington's interpretation of it, and claimed that the act of 1715 on the public treasure gave them more power than that involved in reviewing and examining accounts.[3] Burrington would not recognize such a claim, and held that his instructions from the crown had legally superceded all the laws of the proprietary period. During his whole administration conflicts upon this subject

1 C. R. III, 95, 103, 151-52, 157-68, 264, 269.

2 C. R. III, 95, 159-68, 188, 265, 267, 270-72, 294, 496-98; IV, 189-98, 446-47; VI, 1097; VII, 796, IX, 165; Ms. Laws; Revisal, 1752, 250-53; Revisal, 1765, II, 230-31, Revisal, 1773, 456, 473-75; 503.04.

3 C. R. III, 100, 103, 265.

continued between the lower house and himself. They claimed the privileges which they had enjoyed during the proprietary government of having a large share in the distribution of public monies, while he insisted rigidly upon the letter of his instructions concerning the disposition of them.[1] Not only did they refuse to recognize his claims, but they proceeded to carry their own into action. They appointed and therefore controlled the public treasurer for the province. They had already, by an act of 1729, which the crown apparently never approved, established the office of treasurer in eleven precincts, and the control of these was within their power.[2] His claim was to a large extent legal, as it was based upon specific instrucionst from the crown, but his interpretation of his fiscal powers tended to deprive the lower house of privileges which the proprietors had granted or allowed them. The position of the lower house was to an extent extra legal, but when considered in the light of what had been their customary privileges it was not a very extravagant one. The crown, while having the right to modify these privileges, still did not propose to do so in a very violent manner, and therefore did not sustain its governor in his extreme demand upon the house.

According to the records Johnston had few, if any conflicts, on this subject; he apparently yielded to the demands of the lower house. Dobbs had no disputes with them until 1759. From 1759 to 1765 he had some conflicts with them, as he attempted to recover for the crown control over the fiscal system. In this he failed and the authorities at home gave him no encouragement to continue the struggle. The board of trade in writing to him in August 1759 stated that the custom of the appointment of treasurers by the assembly, or the lower house alone, and of their being amenable to these bodies only had been too long in vogue to be checked.[3] This is fairly good evidence that the lower house had practically controlled the disposition of public monies from the beginning of the royal government. Not only did they do this in time of peace, but also during war.

From 1754 to 1760 a good many acts passed which granted aids to the crown for the purposes of war. Though this money was not placed under the control of the treasurers, who were directly amenable to the house, it was put in the hands of special commissioners, or of the governor, in order

1 C. R. III, 265-672, passim.
2 C. R. III, 151.
3 C. R. VI, 6, 55.

that the war measures might be facilitated. These aids, though granted to the crown, were really not wholly at the disposal of the crown's agent—the governor. The lower house insisted upon the right of examining all the accounts of the expenditure of such monies. During May, 1760, they drew up several resolves concerning the fiscal administration of Dobbs during the war and made several charges against him for his failure to render full accounts to them and for his lack of good judgment, as they thought, in applying these monies.[1] During the latter years of Dobbs' administration they at times went to the extremes of not allowing the governor and the council the right of inspecting the treasurer's accounts.[2] So that Dobbs was almost at the mercy of the house in his fiscal administration. He made several attempts to secure partial control of public monies, but failed in each case.

Tryon and the lower house had no conflicts on this question worth special mention. He allowed them to dispose of the public monies according to the customs of the province, provided they would grant him as much as he needed to carry out his extravagant ideas. Still there is some evidence that he and the house had fundamentally different ideas as to how the fiscal system should be administered. According to his theories of government the disposition of the public monies belonged to the executive and not to the lower house of the legislature.[3] The policy of the house was to appoint sheriffs and treasurers who should collect and expend the public revenue. In theory, these fiscal officers, being appointed by the house, were controlled by them, but in reality they controlled the house in many respects. It was to remedy this defect, to deprive the fiscal officers as far as possible of their influence over the legislature, that Tryon urged that the fiscal system be placed under the control of the executive. It was during the latter part of his administration that the lower house advanced further claims concerning money matters, or at least stated old claims in a stronger and more specific manner than they had before. In November, 1769, they resolved that the sole right of imposing taxes on the common people was then and had ever been legally and constitutionally vested in themselves.[4] They had already set up the claim that they were

1 C. R. VI, 280-84, 287-88, 410-13.
2 C. R. VI, 321.
3 C. R. VIII, 104-5.
4 C. R. VIII, 122.

entitled to a large share of the control of the public monies. They now declare that they alone had the right to levy the taxes, the chief source from which public revenue came.

Martin had to administer the affairs of the province at a time when fiscal conditions were bad, and problems of this nature were therefore important and serious during his administration. In 1772 the lower house passed a bill to the effect that a certain poll tax and excise duty had had their effect and should no longer be collected. Martin rejected the bill, because he did not think that the effect of the tax and duty had been exhausted, as the house declared, and because he desired to regain some control over fiscal affairs. To his mind, filled with the prerogative idea, the lower house should be checked in its assumption of power. They, however in spite of the rejection of the bill by the governor, resolved that the sheriffs and collectors should no longer collect the tax and duty. Martin then appealed to the council, which advised him to issue a proclamation requiring all sheriffs and collectors to continue to collect the said tax and duty under the penalty of being sued on their bonds, and this was done. The house had already provided for such an emergency by resolving to indemnify the officers who obeyed them and were consequently sued by the governor.[1] Because of this resolution, Martin dissolved the assembly. During December, 1773, this question came up again, and again the governor and the house took the same positions as they had during the previous assembly. Neither side would yield, and consequently no agreement was reached.[2]

In this struggle the governor was, as far as the records bear testimony, acting according to sound policy. The tax and duty, on which the two parties became involved in a conflict, were levied by acts of the assembly for the purpose of redeeming the bills of credit which were issued in 1748 and 1754. The house in 1772, and again in 1773, declared that the tax and duty had already had the effect of sinking the said bills of credit. Such a claim was based upon either a mistake in calculation or a misunderstanding of the fiscal acts. According to the acts of 1748, 1754, 1760, 1761, 93,350 pounds of these bills of credit were emitted. By 1772, 53,104 pounds of these had been redeemed and there was cash in the treasury to the amount of 12,586 pounds to be used for redeeming these bills. After this

1 C. R. IX, 228-35.
2 C. R. IX, 745, 944.

cash had been used in redeeming bills of credit there would still be outstanding bills to the amount of 27,660 pounds. To redeem these there must be some source of revenue, and as the records give evidence, though not with absolute certainty, the tax and duty which the house resolved to discontinue were the only sources of income.[1] Martin was therefore correct in not yielding to the demands of the house. Though the authorities in England stood by thier governor in his position,[2] still the house was not ready to yield. No compromise was reached, and both parties remained hostile to each other. The house from the beginning of the royal government had exercised very considerable fiscal powers. Under Johnston, Dobbs and Tryon they won additional powers and under Martin they assumed a position of practical independence.

The two houses agreed on many points in the fiscal administration, but from 1744 to 1769 they left evidence of disputes and conflicts. In March, 1744, the problem of redeeming the outstanding currency was one much under discussion between the two branches of the legislature. The upper house declared that the vote of the lower house on this subject and for emitting new bills of credit was contrary to equity in its public debt clause and contrary to good sense as well as equity in its currency clause, though they did not specify in what particulars these clauses were unsound. After much dispute the upper house advised the governor to dissolve the assembly, which he at once did.[3] This question came up again in the November assembly of 1744. The upper house proposed that the redemption bill which proceeded from the lower house should be amended: (1) that a land tax of six pence per hundred acres be laid as a means of paying the outstanding bills; (2) that two commodities of universal value be taken in payment of the said tax. In addition to these proposed amendments they struck out the clause which allowed wages to the members of the two houses. The lower house insisted upon the clause which provided for the wages of members of the assembly, and refused to accept the amendments of the upper house. They proposed that the outstanding bills be paid by means of a tax on each tithable for a term of eight years. Neither house would yield and the bill was rejected by the upper house.[4] There seems

1 C. R. IX, 166-67, 201, 230-35, 744-45.
2 C. R. IX, 301.
3 C. R. IV, 716-18.
4 C. R. IV, 746-48, 752. 780, 781.

to have been no constitutional reasons for these conflicts, except that the lower house claimed that the task of providing for the redemption of the currency, as well as the payment of taxes, should be left to themselves, and that the council should have nothing to do with either.[1] The payment of wages to both houses alike was certainly not a constitutional question. The difference between a land and a poll tax was not very great and was only a fiscal matter. The fact that the governor took no part in the disputes affords some evidence that they arose chiefly from personal differences.

The two houses became involved in some conflicts over the nomination of public treasurers. The lower house claimed the exclusive right of nominating such officers, while the upper house declared that they had at least equal rights with the lower in this. In 1750 a long dispute arose over this subject, and the upper house rejected a bill appointing a treasurer, after no compromise could be reached.[2] A similar incident occurred in 1765 and with the same results.[3] During 1766 this question was raised again, but after considerable discussion the upper house yielded to the claims of the lower.[4] In this struggle the council was maintaining the legal rights of crown, the governor and themselves as opposed to the action of the lower house, but in the end they yielded and allowed the representatives of the people almost complete control over the fiscal system.

The appointment and control of an agent in England was a matter of importance and was a subject of controversy during the years 1759 to 1761. The lower house won in their struggle with the governor, and the authorities in England granted them most of their claims. The first conflict occurred in January, 1759. The house then passed a bill in which an agent was appointed and provided for, and, in order to compel the council and governor to assent to their bill, they refused to act on other matters until such assent was obtained. Dobbs, rather than yield to the claims of the lower house, prorogued the assembly.[5] In May of the same year he asked the legislature for a supply bill for war purposes, but it refused to pass this unless the governor would allow them to designate an agent in the bill. This he refused to do on the ground that such action, as he thought, took

1 C. R. IV, 780-81.
2 C. R. IV, 1058-59, 1061.
3 C. R. VII, 56.
4 C. R. VII, 312-14, 324, 330.
5 C. R. VI, 2-3.

away the king's prerogative.[1] The board of trade, in writing to Dobbs during the latter part of 1759, stated that they approved of his rejecting the said bill, but that it did not infringe on the king's prerogative and rights as much as he thought. They stated that the method followed by the lower house in appointing an agent was proper and had been allowed by the crown in the Jamaica case; and that, while the the governor should see to it that the laws secured his majefty's rights, they did not think he should have dissolved the assembly because of its action.[2] During the first sessions of the legislature of 1760 this question came up again, and neither side was willing to compromise. The lower house passed a bill appointing a Mr. Bacon as agent, but the upper house refused to accept him. The lower house then declared that they alone had the right of appointing and instructing the agent and could do it independently of the council and governor. For such a declaration the governor dissolved the assembly.[3] The authorities in England again expressed their disapproval of the action of Dobbs. In April, 1761, the board of trade in writing to him stated that they were very sorry he had hindered his majesty's service and that of South Carolina by his trivial policy in insisting on his rights concerning the appointment of an agent, and in rejecting an aid bill because it contained an agent clause. They stated that the people through their representatives had the right of nominating an agent; that the only thing to which he could legally object in their appointment was the mode thereof, and that, while the house acted contrary to custom in doing this in a supply bill, his rejection of the bill for that reason was trivial.[4]

The question of the agent was the subject of conflicts between the two houses. These began in 1759 and continued to be of some importance until 1769. The lower house claimed the larger part in the appointment and control of the agent, and that such was an inherent and undoubted right of its own. The upper house refused to approve such a claim and rejected several bills for the appointment of agents because they contained provisions asserting it.[5] The position of the council was thus practically the same as that of the governor. The executive desired to retain as much control over the agent as possible. It was anxious to have an officer resid-

1 C. R. VI, 32-40.
2 C. R. VI, 54-56.
3 C. R. VI, 345,417.
4 C. R. VI, 538-41.
5 C. R. VI, 92-93, 423-24, 1136-37, 1141-44, 1286-88; VIII, 11.

ing in London who would represent its side with fullness and sympathy. The lower house for a similar reason desired that their control should be supreme. The appointment of such an agent was therefore a matter of importance to both parties. From the practical point of view the lower house were more nearly correct in their demands than the governor. He had ready means of communication with the home government without such an agent; it was also his specific duty to communicate with the board of trade and secretary of state concerning all provincial matters, while the lower house could not obtain a hearing of their case before the authorities in England unless through the governor or an agent. When the governor was hostile to them it was not likely that he would adequately represent their cause. So that, as a matter of necessity, the lower house demanded that the province should keep an agent in London and that they, as representatives of the colonists, should have the larger control over him. The board of trade recognized the justice of such claims and directed the governor to grant most of them.

It was upon judicial, as upon fiscal, questions that the struggles between the governor and the lower house became great and serious; the conflicts over land, fees and the agent were of minor importance as compared with them. It was not until 1760 that judicial problems became so important. It is true that before this time there had been a judicial system under the control of the crown, but this was not the subject of any conflicts worth mentioning. But between 1760 and 1763, and 1773 and 1775, these problems were much discussed and debated. The lower house during May, 1760, presented to Dobbs a bill for the establishment of superior courts of pleas and grand sessions. He rejected it, and then laid the bill and some of his instructions bofore the chief justice for an opinion. He was instructed not to appoint any person to be judge or justice of the peace without the advice and consent of at least three councillors signified in a council meeting, and that all commissions to judges or justices of the peace be during pleasure only. Dobbs claimed that the bill violated the king's rights as expressed in the said instructions. By this bill associate justices were nominated, whose commissions were be given *quam diu se bene gesserint*. The bill stated nothing about the chief justice, as he was appointed by the crown but with a commission during pleasure only. Dobbs argued that the lower house in nominating the associates justice had taken from him and

the council the right of appointing justices, and that the clause which made the commissions during good behavior was an open violation of the rights of the crown. This argument, though legally sound, did not convince the chief justice that the bill should be rejected. He advised the governor that the said bill, while it contained some rather strange ideas, should be accepted, as it was the best possible under the circumstances.[1] Neither did his argument cause the lower house to change their position, and the struggle was kept up. But the province in the meantime fell into great disorder because of a lack of courts, and by the close of 1762 Dobbs assented to bills for superior and inferior courts for two years, in spite of several objectionable clauses.[2]

Between 1763 and 1773 questions effecting the judiciary did not occupy the attention of the governor and lower house, but from 1773 to 1775 these were again among the chief causes of conflict. During February, 1773, the lower house presented to Martin a bill amending and continuing the act for superior courts of 1768. He thought it derogatory to the rights of the crown and rejected it.[3] A new bill relating to superior and inferior courts was then introduced and passed, though with a clause suspending its operation till the king expressed his pleasure. Owing to the pressure of circumstances, Martin gave his assent to this, notwithstanding it contained several objectionable clauses. When this act was sent to England Richard Jackson, at the request of the board of trade, examined it. He in a report to the board stated that it contained two objectionable points: (1) that relating to the legal process of attaching the goods of a person not residing in the province; (2) that which limited the original jurisdiction of the superior courts to debts and demands amounting to not lessthan fifty pounds proclamation money when the plaintiff and defendant both resided in the same district, and to not less than twenty-five pounds when they resided in different districts. He further stated that the clause granting an attachment of the goods of persons not residing in North Carolina was specifically in violation of royal instructions, though he did not state exactly what these were, and consequently advised the disallowance of the act.[4] By this act the lower house attempted to give the province substantially all the

1 C. R. VI, 246-48, 252-54, 361-62, 402-04, 408-9, 413-17.
2 C. R. VI, 890-92, 970.
3 C. R. IX, 534.
4 C. R. IX, 670.

powers of attachment which belonged to a sovereign state and to extend the jurisdiction of the inferior or lower courts. In regulating the superior courts the house was always limited by the fact that the chief justice was appointed by the crown and was therefore responsible to the home government. But in regard to the inferior courts there were few legal limitations upon the house. By this act the jurisdiction of the lower courts was extended while that of the superior courts was limited. This was an attempt on the part of the house to extend its regulation over a large part of the judicial affairs. The lower courts were much more under the direction of the house than the higher courts, and to extend their jurisdiction meant a further extension of the powers of the house. The superior courts were to a very considerable extent under the control of the crown and therefore to limit their jurisdiction was to take power away from the crown. It was perfectly natural, therefore, that Martin should oppose such assumption of powers and that the crown should not allow them.

In December 1773 he, in his opening speech, stated that the crown had disallowed the act mentioned above, chiefly because of the foreign attachment clause. He also stated that the king deemed the extension of the jurisdiction of the inferior courts to cases of fifty pounds inadmissable. On the other hand he assured them that the king was willing to allow a provision for attachment in cases where the action arose in the province, which was customary in the commercial cities of Europe.[1] At the same time he informed the lower house that he had been compelled by unfavorable circumstances and the lack of courts to appoint a court of oyer and terminer and general jail delivery for the trial of the many criminals then in prison. The disallowance of their act by the crown and the appointment of special courts by the governor caused the house to take a still stronger position. They could not and would not yield to a change in their ideas respecting attachment and held that commissions of oyer and terminer could not legally be issued without the consent of themselves.[2] This was almost an open denial of the right of the crown and its governor to regulate the judicial system even in the slightest degree. Both parties gave evidence of considerable temper in this conflict, and Martin pro-

1 C. R. IX, 707-08.

2 C. R. IX, 737-08, 742-43.

rogued the assembly to March, 1774, in order to put an end to the struggle for the time.[1]

In his opening speech to the assembly of March, 1774, Martin spoke very kindly and asked them not to insist upon the foreign attachment clause as the indespensable provision of the bill for the regulation of courts.[2] The upper house replied that they would not make foreign attachments the only condition of their approval of such a bill.[3] But the lower house declared that the people had very cordially approved of the action of the former houses and that consequently they could not yield on attachments or their demands that they should have a share in issuing commissions of oyer and terminer.[4] On March 19 Martin gave his assent to twenty-six bills, but rejected the one for superior courts because of the provisions concerning attacement and other objectionable clauses.[5] The lower house then resolved that the possession of the right to attach the effects of foreign debtors was beneficial to the province and was founded upon equity, and that a copy of the superior court bill, which Martin had rejected, be sent to the crown.[6] While Martin and the house could not agree on a bill for the regulation of the superior courts, still he yielded somewhat to their demands and assented to bills for inferior courts and courts of oyer and terminer.[7] During the short session of April, 1775, one more attempt was made to secure harmony and agreement in the matter of superior courts. The king had in the meantime offered North Carolina the same mode of attachment which the other colonies enjoyed, but the house still insisted upon the former demand and consequently no agreement was reached[8].

Though Martin did not exercise tact in dealing with these questions, his claims were in the main legal, at least based upon his instructions from the crown while those of the lower house rested for the most part on assumptions.

Courts and judges were also the causes of conflicts between the two houses. In 1746 a bill was rejected by the upper house in consequence of

1 C. R. IX, 698-99, 786-87, 790-91.
2 C. R. IX, 831-34.
3 C. R. IX, 835.
4 C. R. IX, 879-80.
5 C. R. IX, 926-28, 862-63.
6 C. R. IX, 939-40.
7 C. R. IX, 946.
8 C. R. IX, 988, 1190-95, 1201-11.

no agreement being reached on the question of the extent of the jurisdiction of the inferior courts.[1] The lower house attempted to extend such jurisdiction to a very considerable degree, while the upper house asserted that such extension was contrary to the rights of the crown and therefore illegal. In 1756 and 1760 three court bills were rejected by the upper house because of a dispute concerning the time of holding such courts and the payment of the salaries of the justices. The lower house had by their bills fixed dates which would be very inconvenient for the chief justice and had demanded that the salaries be paid from the sinking fund instead of a poll tax; the upper house insisted upon dates which would be most convenient to the chief justice and upon the laying of a poll tax with which to pay the salaries.[2] In November, 1762, the two houses had a considerable discussion over the appointment of associate justices of the superior courts, and especially over the issue of commissions of oyer and terminer. The upper house claimed that the king by his prerogative had the right of appointing courts of oyer and terminer. This claim was denied by the lower house. After much dispute the lower house agreed that the governor be given the power by the legislature of issuing commissions for such courts. As this plan would deprive the crown of its right to issue such commissions independently of the lower house, the upper house would not yield and consequently rejected the bill.[3] Thus the matter dropped as far as the legislature was concerned, and it was left in the hands of the executive to provide for courts of oyer and terminer.

The two houses were in substantial agreement on judicial questions from 1763 to 1773, but during the latter year they were in conflict over the question of foreign attachments. During March, 1773, the upper house complained because the lower house had thrown out the following clause in a bill which provided for the division of the province into six districts for superior courts: "And be it further enacted that the estate of no person whatsoever, who has never resided in North Carolina, shall be liable to an attachment otherwise than by the laws and statutes of England in like cases, and that every clause and section in the before recited act shall be repealed." The lower house, while agreeing to concur with all the other suggestions of the upper house, would not permit the above clause to

1 C. R. IV, 833.
2 C. R. V, 665-67; VI, 172-73, 175, 177, 179.
3 C. R. VI, 845-51, 854.

be inserted. They claimed that it was inconsistent with the commercial interests of the province to yield the benefit of attaching the effects of those not residing in North Carolina, and that such a right was exercised by the other colonies.[1] This claim, with the rejection of the above named clause, is evidence that the lower house was demanding practical regulation of judicial affairs and that they claimed rights independent of the council, governor and crown. The council would not allow such a claim and rejected the bill;[2] they were willing to grant foreign attachments, provided they were according to the customs and laws of England, but beyond this they were not yet ready to go. In December of the same year this question came up again, and both houses still insisted upon their former ideas.[3] But during the March session of 1774 the upper house yielded somewhat to the demands of the lower house and a compromise was reached.[4] To this time the upper house had maintained the rights of the crown and governor, and was therefore a unit with the governor in his struggle against the encroachments of the lower house. But now the councillors were beginning to take the side of the colonists as against the crown administration, and were ready to compromise with the representatives of the people on judicial questions.

The governor and the lower house were in conflict over the questions of representation in the legislature, and what should constitute a quorum, which may be for convenience called constitutional questions. These arose under Dobbs, Tryon and Martin; they were never critical, though at times annoying, and were never fully settled. In 1760 the lower house practically claimed that the crown had no right to compel counties and towns to take out charters of incorporation from the governor before they were entitled to representation in the legislature. Dobbs declared that their claim was contrary to the rights of the crown, as opposed to the instructions from the crown.[5] He was correct in his position, at least his declaration was backed up by specific instructions from the crown, and the house almost ceased to press their claim.[6] The question of the quorum

1 C. R. IX, 427, 435-37.
2 C. R. IX, 438.
3 C. R. IX, 721-22, 726-33.
4 C. R. IX, 844-46, 849-50, 853-54, 857.
5 C. R. VI, 245.
6 C. R. VI, 724. 985-80; V, 1111.

was of far more importance. In 1760 Dobbs asked that the lower house act with fifteen as a quorum for business. They refused to do so and denied his right of determining what should constitute a quorum. They claimed that it was their own right to decide upon this; and at times they would allow twenty-five to act and again they would not make a move towards discharging business without a majority of their entire number.[1] In 1764 and 1773 they again refused to act with a quorum of fifteen as the governor asked.[2] The lower house in taking such a position was acting directly contrary to the instructions from the crown, which specifically stated that fifteen members should constitute a quorum.[3] But as this was a point of considerable importance to them they would not obey the crown, and would not act without a majority, or at least twenty-five, of their number. It was much more difficult for the governor to control from twenty-five to thirty-five members than fifteen. With a small quorum he might easily pass acts against the interests of the colonists, but with a large one it was almost impossible.

The two houses did not dispute over representation in the legislature or what should constitute a quorum, but they did become involved in a conflict over the question of examining public claims and accounts. The chief instance of this was in 1762. The lower house appointed ten of their number as a committee on accounts, and eleven on claims, while the upper house appointed only three of their members on each. Should each house committee act separately and independently of the other in their examination of claims and accounts? It was upon this question that a dispute arose. The upper house claimed that their committees had equal rights in this with those of the lower house, though their number was by no means as large, and that their committees could act by themselves or jointly, as they liked. The lower house denied this claim, at least so far as separate and independent action was concerned.[4] If the upper house members could act only in conjunction with the lower house members, the balance of power would certainly be with the lower house, as ten or eleven to three was a very large majority. The lower house did not ask for so much power as would be given them by this arrangement, but

1 C. R. VI, 319-24, 344-45.
2 C. R. VI, 1024-25; IX, 595-96.
3 C. R. V, 1111.
4 C. R. VI, 824-25.

they did demand a substantial control in the examination of all public claims and accounts upon the ground that they represented the people who had to pay these; and this control was at several times allowed by the upper house.

We have now seen that the conflicts between the executive—the governor and council—and the lower house of the legislature arose from their different points of view on questions of land, fees, money, agent, courts and judges, and constitutional privileges. The fact has been made apparent that the governor and the council were practically a unit in their point of view and in their attempts to maintain the rights and interests of the crown; and this we should most naturally expect, as they were both the agents of the crown. The attitude of the executive toward the lower house was for the most part supported by precedents and in substantial accordance with the royal instructions. These instructions constituted the chief guide of the executive. In some respects they were very specific, and the executive must act according to them if possible. In other respects much was left to the interpretation and discretion of the executive. Conflicts arose between the executive and the lower house both over the specific clauses and those in the interpretation of which the executive was to use its discretion. The lower house in questioning or denying the one was attacking the policy of the crown, but in disputing over the other it was merely doubting the interpretation of the officers of the crown who resided in the province. The fact has also been made apparent that the lower house acted in sympathy with the colonists, maintaining their rights and interests. Many of their claims were not founded on a strong legal basis, but appear rather as assumptions when looked at from the purely constitutional standpoint. But there was to the minds of the colonists something greater and nobler than the English public law as applied to a royal province in the eighteenth cedtury—the principles of freedom and independence, and during the whole of the royal period the lower house in denying the rights of the crown defended its action by appealing to these principles.

THE SOURCES.

PRINTED.

1 The Colonial Records of North Carolina: 10v.; 1886-1890.

2 The State Records of North Carolina; 10v.; 1895—.

3 The Swann Revisal of North Carolina Laws: 1v.; 1751-1752.

4 The Davis Revisal of North Carolina Laws: 2v.; 1764-1765.

5 The Davis Revisal of North Carolina Laws: 1v.; 1773.

6 The Iredell Revisal of North Carolina Laws: 1v.; 1791.

MANUSCRIPT.

1 Laws of North Carolina, 1715-1774, at intervals; these give in full several of the acts which the Revisals have only by title.

2 Land Warrants.

3 Land Surveys.

4 Records of Land Grants.

VITA.

The author was prepared for college in the schools of W. A. and J. J. Blair and of J. A. and M. H. Holt, North Carolina. He was a student in Trinity College, 1888-1892, from which he received the degree of A. B. He was instructor of Greek and Latin in the same institution 1892-1893, and professor of Latin in Greensboro Female College 1894-1898, both of these schools being located in North Carolina. From 1898 to 1900 he was a student in Columbia University, New York City, being the holder of a scholarship one year and a fellowship the other. In 1898 he published *The Church and Private Schools of North Carolina*, a historical work of 247 pages. During the academic year, 1900-1901, he was a lecturer in History in Columbia University, and in June 1901 was elected to the associate professorship of Economics and History in the University of North Carolina.